



राजपत्र, हिमाचल प्रदेश

हिमाचल प्रदेश राज्य शासन द्वारा प्रकाशित

शिमला, वीरवार, 18 दिसम्बर, 2008 / 27 अग्रहायण, 1930

हिमाचल प्रदेश सरकार

HIGH COURT OF HIMACHAL PRADESH AT SHIMLA.

No.HHC/GAZ/14-280/2005-

Dated Shimla, the 11th September, 2008

NOTIFICATION.

It is hereby notified for information of Additional District and Sessions Judge concerned that the 7th Departmental Examination under Rule 18 of the Himachal Pradesh Judicial Service Rules, 2004 will be held in the premises of the High Court, Shimla- 171 001 on the following date:-

Date	Paper/subject	Time
Monday December 15, 2008	Criminal Law	10 AM to 1 PM

BY ORDER

(V.K.Sharma)
Registrar General
Secretary Departmental
Examination Committee.

HIGH COURT OF HIMACHAL PRADESH AT SHIMLA

No.HHC/Rules 22(25)/83-

Dated 27.11.2008.

NOTIFICATION

In exercise of the powers conferred under Rule 2 read with Rule 10 of the Himachal Pradesh Judicial Service Rules,2004, Hon'ble the Chief Justice and the Hon'ble Judges, High Court of H.P. are pleased to make the following Amendment(s) in Regulation No.4(ii) and 17(ix) of Himachal Pradesh Judicial Service (Departmental Examination), Regulations, 2004.

- Short title:** 1. These Regulations shall be called "the Himachal Pradesh (Departmental Examination) (1st amendment) Regulations, 2008."
- Commencement:** 2. These Regulations shall come into force with immediate effect.
- Amendment:** 3. Regulation No.4(ii) and 17 (ix) of Himachal Pradesh Judicial Service (Departmental Examination) Regulations, 2004 shall be substituted as under:-
- 1. Examination Committee** 4. (ii) The Examination Committee shall consists of:-
 (a) Chairman- Hon'ble the Chief Justice.
 (b) Members- Two or three Judges of the High Court as nominated by the Chief Justice.
 (c) Secretary- Registrar General High Court of Himachal Pradesh or such other Officer of the High Court as may be nominated by the Chief Justice.
2. Written 17(ix) "The Examination Committee may, in deserving and suitable case, grant 5% grace marks in any one or more papers."

BY ORDER

(K.L. Sharma)
Registrar (Rules)

HIGH COURT OF HIMACHAL PRADESH, SHIMLA - 171 001.

No.HHC/Admn.3(330)92-I-

Dated : 19.11.2008.

NOTIFICATION

It is hereby notified that Shri Gopalacharya Gautam, Secretary, High Court of Himachal Pradesh, Shimla shall stand retired from service on and with effect from 30.11.2008 (A.N.).

**BY ORDER
REGISTRAR GENERAL**

HIGH COURT OF HIMACHAL PRADESH AT SHIMLA-171 001.

No.HHC/GAZ/14-58/75-XI-

Dated Shimla, the 11th September, 2008.**NOTIFICATION**

It is hereby notified for information of the Civil Judges(Junior Division) that the 53rd Departmental Examination under Rule 18 of the Himachal Pradesh Judicial Service Rules, 2004 will be held in the premises of the High Court Shimla- 171 001 on the following dates:-

Date	Paper/subject	Time
Monday December 15, 2008	Criminal Law	10 AM to 1 PM
	Civil Law	2 PM to 5 PM
Tuesday December 16, 2008	Revenue Law-I	10 AM to 1 PM
	Revenue Law-II	2 PM to 5 PM
Wednesday December 17, 2008	Accounts	10 AM to 1 PM
	Constitutional Law	2 PM to 5 PM

BY ORDER

Registry General
Secretary Departmental
Examination Committee.

HIGH COURT OF HIMACHAL PRADESH AT SHIMLA.

No.HHC/GAZ/14-274/2004-

Dated Shimla, the 4th October, 2008**NOTIFICATION**

In exercise of the powers vesting in it under Article 235 of the Constitution of India and Rule 4(2) of the H.P.Judicial Service Rules, 2004 and all other powers enabling it in this behalf, Hon'ble High Court of Himachal Pradesh has been pleased to order the promotion of Shri Krishan Kumar, Civil Judge (Jr. Division), as Civil Judge (Senior Division), in the pay scale of Rs.12850-300-13150-350-15950-400-17550, purely on adhoc basis, with immediate effect.

**BY ORDER
REGISTRAR GENERAL**

ब अदालत श्री आलम सिंह, उप-रजिस्टर, फतेहपुर, जिला कांगड़ा (हि० प्र०)

केस नम्बर 1/R. C/08.

तारीख पेशी : 15-1-2009.

श्री दलजीत सिंह, श्री संजीव सिंह पुत्रान् श्री औकांर सिंह पुत्र श्री गजे सिंह, साकन समकड, तहसील फतेहपुर (हि० प्र०)।

बनाम

आम जनता

विषय :—जुवाली वसीयत को पंजीकृत करने बारे।

प्रार्थी श्री दलजीत सिंह, संजीव सिंह पुत्र श्री औकांर सिंह, साकन समकड, तहसील फतेहपुर ने आवेदन किया है कि उनके पिता औकांर सिंह पुत्र श्री गजे सिंह ने चल व अचल सम्पत्ति की एक जुवानी वसीयत उनके नाम की थी, जिनकी दिनांक 26-6-2008 को मृत्यु हो गई, उक्त वसीयत को वह अब रजिस्टर करवाना चाहते हैं। अतः यदि किसी व्यक्ति को इस बारे आपत्ति हो तो वह असालतन या वकालतन दिनांक 15-1-2009 को सुबह 10.00 बजे एतराज प्रस्तुत कर सकता है अन्यथा नियमानुसार कार्यवाही अमल में लाई जाएगी।

आज दिनांक 6-12-2008 को मेरे हस्ताक्षर व मोहर अदालत द्वारा जारी हुआ।

मोहर।

ए० एस० चम्पियाल,
उप-रजिस्टार, फतेहपुर,
जिला कांगड़ा (हि० प्र०)।

ब अदालत श्री प्रदीप कुमार ठाकुर, हि० प्र० से०, आयुक्त, कार्मकार मुआवजा अधिनियम एवं उप-मण्डल अधिकारी (ना०), कांगड़ा (हि० प्र०)

तारीख पेशी : 23-12-2008

1. कुलविन्द्र कोर विधवा श्री मदन सिंह पुत्र श्री अमर सिंह, जाति जाट, निवासी गांव पलैरा, तहसील व जिला कांगड़ा, 2. सन्नी उर्फ मनिंद्र सिंह पुत्र श्री मदन सिंह, जाति जाट, निवासी गांव पलैरा, तहसील व जिला कांगड़ा, 3. मनीषा उर्फ ज्योति पुत्री श्री मदन सिंह, आयु 15 वर्ष, जाति जाट, निवासी गांव पलैरा, तहसील व जिला कांगड़ा, 4. पूजा पुत्री श्री मदन सिंह, आयु 13 वर्ष, जाति जाट, निवासी गांव पलैरा, तहसील व जिला कांगड़ा (हि० प्र०) . . प्रार्थीगण।

बनाम

मैसर्ज मन्जीत सिंह एण्ड कम्पनी शराब विक्रता द्वारा श्री मन्जीत सिंह, शराब ठेकेदार, निवासी ग्रांव योल, तहसील धर्मशाला, जिला कांगड़ा (हि० प्र०) . . प्रतिवादी।

कर्मकार मुआवजा अधिनियम, 1923 की धारा 3 के अन्तर्गत याचिका केस नम्बर 4/2008.

उपरोक्त याचिका में प्रतिवादी श्री मन्जीत सिंह को इस अदालत द्वारा कई बार बजरिया समन तलब किया गया लेकिन तामील समन साधारण ढंग से न हो पा रही है। लिहाजा इस इश्तहार द्वारा उपरोक्त प्रतिवादी को सूचित किया जाता है कि वह दिनांक 23-12-2008 को सुबह 10.00 बजे असालतन या वकालतन अदालत हजा में हाजिर आकर पैरवी मुकद्दमा करें अन्यथा उसके खिलाफ एक तरफा कार्यवाही अमल में लाई जावेगी। दीगर कोई उजर काबिले समायत न होगा।

आज दिनांक 5-12-2008 को मेरे हस्ताक्षर व मोहर अदालत से जारी हुआ।

मोहर।

प्रदीप कुमार ठाकुर,
आयुक्त, कार्यकार मुआवजा,
अधिनियम एवं उप-मण्डल अधिकारी (ना०) कांगड़ा,
तहसील व जिला कांगड़ा (हि० प्र०)

ब अदालत श्री जे० आर० शर्मा, तहसीलदार एवं कार्यकारी दण्डाधिकारी, तहसील धर्मशाला,
जिला कांगड़ा (हि० प्र०)

मुकद्दमा नम्बर :.....

श्री Jampa Kalden @ Kanden

बनाम

G. P.

विषय :—प्रार्थना—पत्र जेर धारा 13(3)जन्म एवं मृत्यु पंजीकरण अधिनियम, 1969.

नोटिस बनाम आम जनता।

श्री Jampa Kalden @ Kanden पुत्र श्री Ougeh, निवासी H. No. 1220 भागसुनाथ मकलोडगंज, तहसील धर्मशाला, जिला कांगड़ा ने इस अदालत में शपथ-पत्र सहित मुकद्दमा दायर किया है कि उसकी पुत्री नाम Namgyal Dolkar का जन्म दिनांक 5-7-1982 है। परन्तु ऐसा 0 सीधी धर्मशाला में जन्म पंजीकृत नहीं है। अतः इसे पंजीकृत किये जाने के आदेश दिये जायें। इस नोटिस के द्वारा समस्त जनता को तथा सम्बन्धित सम्बन्धियों को सूचित किया जाता है कि यदि किसी को उपरोक्त बच्चे Namgyal की जन्म तिथि पंजीकृत किये जाने बारे कोई एतराज हो तो वह अपना एतराज हमारी अदालत में दिनांक 23-1-2009 को असालतन या वकालतन हाजिर आकर अपना एतराज पेश कर सकता है। अन्यथा मुताविक शपथ-पत्र जन्म तिथि पंजीकृत किये जाने बारे आदेश पारित कर दिये जायेंगे।

आज दिनांक 11-12-2008 को हमारे हस्ताक्षर व मोहर अदालत द्वारा जारी किया गया।

मोहर।

जे० आर० शर्मा,
तहसीलदार एवं कार्यकारी दण्डाधिकारी,
तहसील धर्मशाला, जिला कांगड़ा (हि० प्र०)।

In the court of Tehsildar-cum-Executive Magistrate Kangra

Case No.....

Next Date of Hearing 9-1-2009.

Smt. Sudha Choudhary wife of Shri Chander Shekhar, r/o Village Pathiar, P. O. Pathiar, Tehsil & District Kangra (H. P.)
. . . Applicant

Versus.

1. General Public.

2. Pradhan Gram Panchayet Pathiar, Tehsil & District Kangra.

Application under section 13 (3) of Himachal Pradesh registration of Birth & Death Act, 1969.

Notice to : —1. General Public 2. Pradesh Gram Panchayat Pathiar.

Whereas Smt. Sudha Choudhary wife of Shri Chander Shekhar, r/o Village Pathiar, P. O. Pathiar, Has filed an application alongwith affidavit to the effect that his son named Baibhav Shekhar born on 19-10-2005 and he could not get entered the date of birth entry with the local Registrar of birth & death Gram Panchayat Pathiar and the same be ordered to be entred.

Hence proclamation is hereby made to the respondents General Public/Gram Panchayet Pathiar for inviting the objection if any, if some one has any objection regarding registration of birth, he may appear before the undersigned court on or before 9-1-2009 failing which *ex parte* proceeding will be initiated and the order of registration of birth be announced.

Given under my hand and the seal of the court.

Seal.

Sd/-

Tehsildar-cum-Executive,
Magistrate Kangra (H. P.).

In the court of Tehsildar-cum-Executive Magistrate Kangra

Case No.....

Next Date of Hearing 9-1-2009.

Shri Bir Singh son of Shri Chuni Lal , r/o Village Bheri, P. O. Bandi, Tehsil & District Kangra (H. P.)
..Applicant.

Versus

General Public.

Pradhan Gram Panchayat Rachniahu, Tehsil & District Kangra.

Application under section 13 (3) of Himachal Pradesh registration of Birth & Death Act, 1969.

Notice to :—1. General Public, 2. Pradhan Gram Panchayat Rachhialu

Whereas Shri Bir Singh son of Shri Chuni Lal , r/o Village Bheri, P. O. Bandi, Has filed an application alongwith affidavit to the effect that his named Mothar Smt. Savitri Devi expired on 17-1-1995 and he could not get entered the date of death entry with the local Registrar of birth & death Gram Panchayet Rachhialu and the same be ordered to be entred with the concerned panchayat.

Hence proclamation is hereby made to the respondents General Public/Gram Panchayat Rachnialu for inviting the objection if any, if some one has any objection regarding registration of death, he may appear before the undersigned court on or before 30-12-2008 failing which *ex-parte* proceeding will be initiated and the order of registration of death be announced.

Given under my hand and the seal of the court.

Seal.

Sd/-

*Tehsildar-cum-Executive,
Magistrate Kangra (H. P.).*

ब अदालत श्री एस० एस० ठाकुर, नायब तहसीलदार एवं कार्यकारी दण्डाधिकारी, करसोग,
जिला मण्डी (हि० प्र०)

श्री शंकर दास गुप्ता पुत्र स्व० श्री नरोत्तम राम, निवासी व डाकघर करसोग, तहसील करसोग, जिला
मण्डी (हि० प्र०)।

बनाम

आम जनता

दरख्खास्त जेर धारा 13 (3) जन्म एवं मृत्यु पंजीकरण अधिनियम, 1969.

श्री शंकर दास गुप्ता ने उप-मण्डल अधिकारी (ना०) करसोग की अदालत में एक प्रार्थना-पत्र दिनांक 15-7-2008 का मय शपथ-पत्र, मृत्यु प्रमाण-पत्र नकल परिवार रजिस्टर गुजारा है कि जिसमें उसने व्यक्त किया उसकी पत्नी श्रीमती दमयन्ती गुप्ता की मृत्यु ग्राम पंचायत वासा, तहसील चच्चोट में कण्डोल नामक स्थान में दिनांक 13-1-2007 को हुई है। उपरोक्त मूल प्रकरण उप-मण्डल अधिकारी (ना०) करसोग के न्यायालय से स्थानान्तरित इस न्यायालय में उनके

कार्यालय के पत्र संख्या० रीडर 4474 दिनांक 25-10-2008 को हुआ है जिसमें किसी कारणवश प्रार्थी ने अपनी पत्नी की मृत्यु ग्राम पंचायत अप्पर करसोग के परिवार रजिस्टर में दर्ज व कटवा नहीं सका। प्रार्थी अब ग्राम पंचायत अप्पर करसोग के परिवार रजिस्टर में अपनी पत्नी की मृत्यु तिथि 13-1-2007 को दर्ज करवाकर परिवार रजिस्टर से कटवाना चाहता है इसकी पुष्टि में उसने नकल परिवार रजिस्टर ग्राम पंचायत अप्पर करसोग जो सचिव द्वारा मिति 3-6-2008 को जारी है की सत्यापित छायाप्रति भी संलग्न है व प्रार्थी ने ग्राम पंचायत वासा के सचिव द्वारा जारी मृत्यु प्रमाण-पत्र श्रीमती दमयन्ती गुप्ता मिति 11-6-2008 की सत्यापित प्रतिलिपि भी इस न्यायालय में प्रस्तुत की है, जिसके अनुसार श्रीमती दमयन्ती गुप्ता पुत्री श्री अच्छरु की मृत्यु दिनांक 13-1-2007 को मुकाम कण्डोल में हो चुकी है जोकि ग्राम पंचायत वासा में अपने पिता स्व० श्री अच्छरु के घर पर रहती थी। प्रार्थी शंकर दास गुप्ता ने इस बारे एक शपथ पत्र नोटरी पब्लिक करसोग से मिति 15-7-2008 सत्यापित करवाया है जिसमें उसने अपनी पत्नी श्रीमती दमयन्ती के मुकाम कण्डोल में मिति 13-1-2007 को मृत्यु होने के बारा शपथ-पत्र प्रस्तुत किया है व मृतका प्रार्थी की पत्नी होने के कारण उसका नाम परिवार रजिस्टर ग्राम पंचायत अप्पर करसोग में अभी तक न काटा गया है, को मृत्यु दर्ज करके नाम कटवाने के बारा प्रार्थना की है।

अतः सर्वसाधारण जनता को इस इश्तहार के माध्यम से सूचित किया जाता है कि यदि किसी व्यक्ति को श्रीमती दमयन्ती गुप्ता पत्नी श्री शंकर दास गुप्ता, निवासी करसोग जिसकी मृत्यु गांव कण्डोल ग्राम पंचायत वासा में दिनांक 13-1-2007 को हुई है का नाम परिवार रजिस्टर ग्राम पंचायत अप्पर करसोग में उसका नाम कटवाने बारे कोई आपत्ति/एतराज हो तो वह दिनांक 14-1-2009 को इस न्यायालय में प्रातः 10.00 बजे असालतन या वकालतन उपस्थित होकर अपनी आपत्ति/एतराज पेश कर सकता है हाजिर न होने की सूरत में नियमानुसार एक तरफा कार्यवाही अमल में लाई जावेंगी व श्रीमती दमयन्ती गुप्ता जिसकी मृत्यु मुकाम कण्डोल ग्राम पंचायत वासा मायका में हुई है का नाम ग्राम पंचायत अप्पर करसोग में उसके पति शंकर दास गुप्ता के साथ नाम दर्ज है व उसके परिवार रजिस्टर में नाम नियमानुसार काटने बारे आदेश प्रदान कर दिए जायेंगे।

आज दिनांक 27-11-2008 को मेरे हस्ताक्षर व मोहर अदालत से जारी हुआ।

मोहर।

एस० एस० ठाकुर,
नायब तहसीलदार एवं कार्यकारी दण्डाधिकारी,
करसोग, जिला मण्डी (हिं0 प्र0)।

ब अदालत श्री गोपाल चन्द, उप-मण्डल दण्डाधिकारी, रामपुर बुशौहर, जिला शिमला (हिं0 प्र0)

श्री दौलत राम पुत्र श्री प्यारे लाल, ग्राम व डाकघर दयोढी 12/20, तहसील रामपुर, जिला शिमला (हिं0 प्र0)

बनाम

आम जनता

प्रार्थना-पत्र आवेदक की पुत्री का मृत्यु पंजीकरण करवाने बारे (जन्म और मृत्यु रजिस्टीकरण अधिनियम, 1969 13(3)।

उपरोक्त प्रार्थी ने इस अदालत में शपथ पत्र सहित प्रार्थना—पत्र गुजारा है कि वह अपनी पुत्री स्व0 रोशनी देवी का मृत्यु पंजीकरण स्थानीय पंचायत में दर्ज करना चाहता है। अतः इस इश्तहार द्वारा सर्वसाधारण को सूचित किया जाता है कि यदि किसी व्यक्ति को उसके मृत्यु पंजीकरण दर्ज करने में कोई एतराज हो तो 5 जनवरी, 2009 से पूर्व इस अदालत में असालतन/वकालतन हाजिर आकर अपना एतराज प्रस्तुत कर सकता है अन्यथा उपरोक्त प्रार्थी की पुत्री का मृत्यु पंजीकरण को पंचायत रजिस्टर में दर्ज करने के आदेश पारित किए जाएंगे।

आज दिनांक 5—12—2008 को मेरे हस्ताक्षर एवं मोहर द्वारा जारी हुआ।

मोहर।

गोपाल चन्द,
उप—मण्डल दण्डाधिकारी, रामपुर बुशौहर,
जिला शिमला (हिं0 प्र0)।

ब अदालत श्री अशवनी राज शाह, उप—मण्डल दण्डाधिकारी ठियोग, जिला शिमला (हिं0 प्र0)

श्री बाबू राम पुत्र श्री बदरु राम, ग्राम नोहल, ग्राम पंचायत नोहल, तहसील ठियोग, जिला शिमला (हिं0 प्र0) प्रार्थी।

बनाम

आम जनता . . . प्रत्यार्थी।

आवेदन—पत्र नाम की दरुस्ती बारे।

श्री बाबू राम पुत्र श्री बदरु राम, ग्राम नोहल, ग्राम पंचायत नोहल, तहसील ठियोग, जिला शिमला (हिं0 प्र0) ने अपनी पत्नी का नाम बीना से बदल कर देवकी वर्मा रखना चाहता है जिसकी जन्म तिथि 28—2—1964 की है व पुत्र आशा राम का नाम बदल कर आशीश वर्मा जिसकी जन्म तिथि 3—7—1988 की है तथा पुत्री अंजना देवी का नाम बदल कर आंचल वर्मा जिसकी जन्म तिथि 12—11—1989 की है को परिवार रजिस्टर ग्राम पंचायत नोहल में दर्ज करवाने हेतु प्रार्थना—पत्र गुजार रखा है।

अतः इस इश्तहार के माध्यम से सर्वसाधारण को सूचित किया जाता है कि यदि इस बारा किसी व्यक्ति अथवा रिश्तेदार को कोई एतराज हो तो वह दिनांक 23—12—2008 को प्रातः 10.00 बजे हाजिर अदालत आकर अपना एतराज पेश करे अन्यथा दीगर कार्यवाही अमल में लाई जावेगी।

आज दिनांक 17—11—2008 को मेरे हस्ताक्षर व मोहर अदालत से जारी किया गया।

मोहर।

अशवनी राज शाह,
उप—मण्डल दण्डाधिकारी ठियोग,
जिला शिमला (हिं0 प्र0)।

ब अदालत श्री अशवनी राज शाह, उप—मण्डल दण्डाधिकारी ठियोग, जिला शिमला (हिं0 प्र0)

श्री ओम प्रकाश पुत्र श्री लायक राम, निवासी ग्राम गजैड़ी, ग्राम पंचायत जैस, तहसील ठियोग, जिला शिमला (हिं0 प्र0) प्रार्थी।

बनाम

आम जनता . . . प्रत्यार्थी।

आवेदन—पत्र जेर धारा 13(3) जन्म एवं मृत्यु पंजीकरण अधिनियम, 1969.

श्री ओम प्रकाश पुत्र श्री लायक राम, ग्राम गजैडी, तहसील ठियोग, जिला शिमला (हि० प्र०) ने अपने चाचा श्री ग्यारू राम जिनका देहान्त 15—3—1998 को हो चुका है का नाम परिवार रजिस्टर ग्राम पंचायत जैस से कटवाने हेतु प्रार्थना—पत्र गुजार रखा है।

अतः इस इश्तहार के माध्यम से सर्वसाधारण को सूचित किया जाता है कि यदि इस बारा किसी व्यक्ति अथवा रिश्तेदार को कोई एतराज हो तो वह दिनांक 23—12—2008 को प्रातः 10.00 बजे हाजिर अदालत आकर अपना एतराज पेश करे अन्यथा दीगर कार्यवाही अमल में लाई जावेगी।

आज दिनांक 17—11—2008 को मेरे हस्ताक्षर व मोहर अदालत से जारी किया गया।

मोहर।

अशवनी राज शाह,
उप—मण्डल दण्डाधिकारी ठियोग,
जिला शिमला (हि० प्र०)।

ब अदालत डा० अशवनी कुमार शर्मा, उप—मण्डलाधिकारी (ना०), चौपाल, जिला शिमला (हि० प्र०)

प्रार्थना—पत्र श्री प्रेम लाल शर्मा पुत्र श्री लच्छी राम, निवासी कशौल, परगना बड़गांव, ग्राम पंचायत खगना, तहसील चौपाल, जिला शिमला (हि० प्र०)।

बनाम

आम जनता

यह कि श्री प्रेम लाल शर्मा पुत्र श्री लच्छी राम, निवासी कशौल, परगना बड़गांव, डाकघर खगना, तहसील चौपाल, जिला शिमला (हि० प्र०) ने इस न्यायालय में एक प्रार्थना—पत्र प्रस्तुत किया है कि उनकी पुत्रियों की जन्म तिथि पंचायत अभिलेख में गलत दर्ज है उनके पुत्र व पुत्रियों की जन्म तिथि निम्न प्रकार है:-1. नीलम शर्मा जन्म तिथि 1—1—1984, अंजना कुमारी जन्म तिथि 1—2—1985, नीतिका कुमारी पुत्री श्री प्रेम लाल शर्मा जन्म तिथि 5—3—1987, प्रियंका शर्मा जन्म तिथि 1—1—1988, ज्योतिका शर्मा जन्म तिथि 1—4—1990, प्रीति शर्मा जन्म तिथि 2—10—1992, दीक्षा शर्मा जन्म तिथि 2—4—1994 है जोकि सही है।

अतः सर्वसाधारण को इस इश्तहार द्वारा सूचित किया जाता है कि यदि किसी को इस बारे कोई उजर व एतराज हो तो वह दिनांक 20—1—2009 को प्रातः 10.00 बजे अदालत हजा स्थित चौपाल में हाजिर आकर अपना एजराज पेश कर सकता है। निर्धारित अवधि के पश्चात् एक पक्षीय कार्यवाही अमल में जाई जाएगी। प्रार्थना—पत्र पर यथाचित आदेश पारित किये जाएंगे।

आज दिनांक 10—12—2008 को मेरे हस्ताक्षर व मोहर अदालत से जारी किया गया।

मोहर।

डा० अशवनी कुमार शर्मा,
उप—मण्डलाधिकारी (ना०), चौपाल,
जिला शिमला (हि० प्र०)।

ब अदालत डा० अशवनी कुमार शर्मा, उप—मण्डलाधिकारी (ना०), चौपाल, जिला शिमला (हि० प्र०)

प्रार्थना—पत्र श्री कुन्दन लाल पुत्र स्व० श्री केसरू, निवासी ग्राम चौपाल, तहसील चौपाल, जिला शिमला (हि० प्र०)।

बनाम

आम जनता

यह है कि श्री कुन्दन लाल पुत्र स्व० श्री केसरू, ग्राम चौपाल, तहसील चौपाल, जिला शिमला (हि० प्र०) ने इस न्यायालय में एक प्रार्थना—पत्र प्रस्तुत किया है कि उनके पुत्र धुप्र की जन्म तिथि 23—11—2007 पंचायत अभिलेख में दर्ज न करवा सका।

अतः सर्वसाधारण को इस इश्तहार द्वारा सूचित किया जाता है कि यदि इस बारे किसी को कोई उजर व एतराज हो तो वह दिनांक 20—1—2009 को प्रातः 10.00 बजे अदालत हजा स्थित चौपाल में असालतन व वकालतन हाजिर आकर अपना एजराज पेश कर सकता है। निर्धारित अवधि के पश्चात् एक पक्षीय कार्यवाही अमल में जाई जाएगी। प्रार्थना—पत्र पर यथाचित् आदेश पारित किये जाएंगे।

आज दिनांक 10—12—2008 को मेरे हस्ताक्षर व मोहर अदालत से जारी किया गया।

मोहर।

डा० अशवनी कुमार शर्मा,
उप—मण्डलाधिकारी (ना०), चौपाल,
जिला शिमला (हि० प्र०)।

ब अदालत श्री प्रताप सिंह ठाकुर, कार्यकारी दण्डाधिकारी एवं तहसीलदार भटियात, चुवाड़ी,
जिला चम्बा (हि० प्र०)

श्री बलदेव सिंह पुत्र श्री दलीप सिंह, निवासी द्रवड़, डाकघर तुनुहटटी, तहसील भटियात,
जिला चम्बा (हि० प्र०) . . प्रार्थी।

बनाम

आम जनता

. . प्रतिवादी।

विषय—प्रार्थना—पत्र जेर धारा 13(3) जन्म एवं मृत्यु पंजीकरण ग्राम पंचायत चालामा में नाम व जन्म तिथि दर्ज करवाने के सम्बन्ध में।

उपरोक्त प्रार्थी ने अधोहस्ताक्षरी की अदालत में प्रार्थना—पत्र व व्यान हल्फी इस आशय से गुजारा है कि प्रार्थी की लड़की शिवाली देवी की जन्म तिथि 23–11–2003 है जो ग्राम पंचायत चालामा के रिकार्ड में दर्ज नहीं है जिसे दर्ज किया जाए।

इस सम्बन्ध में सर्वसाधारण को बजरिया सूचित किया जाता है कि शिवाली देवी की जन्म तिथि ग्राम पंचायत चालामा में यदि दर्ज करने पर किसी को कोई उजर/एतराज हो तो वह दिनांक 3–1–2009 को असालतन या वकालतन हाजिर होकर अदालत में अपना एतराज दर्ज करवा सकता है। हाजिर न होने की सूरत में उपरोक्त नाम व जन्म तिथि पंजीकरण के आदेश दे दिए जायेंगे।

आज दिनांक 3–12–2008 को हमारे हस्ताक्षर व मोहर अदालत से जारी हुआ।

मोहर।

प्रताप सिंह ठाकुर,
कार्यकारी दण्डाधिकारी एवं तहसीलदार,
भटियात, चुवाड़ी, जिला चम्बा (हिं0 प्र0)।

ब अदालत श्री प्रताप सिंह ठाकुर, कार्यकारी दण्डाधिकारी एवं तहसीलदार भटियात, चुवाड़ी,
जिला चम्बा (हिं0 प्र0)

श्रीमती कांशो देवी पत्नी श्री सुख देव, निवासी चीर, डाकघर जन्द्रोग, तहसील भटियात,
जिला चम्बा (हिं0 प्र0) . . . प्रार्थी।

बनाम

आम जनता . . . प्रतिवादी।

विषय.—प्रार्थना—पत्र जेर धारा 13(3) जन्म एवं मृत्यु पंजीकरण ग्राम पंचायत जन्द्रोग, तहसील भडियात, जिला चम्बा (हिं0 प्र0) में अपनी लड़कियों का नाम व जन्म तिथि दर्ज करवाने के सम्बन्ध में।

उपरोक्त प्रार्थीया ने अधोहस्ताक्षरी की अदालत में प्रार्थना—पत्र व व्यान हल्फी इस आशय से गुजारा है कि प्रार्थीया की लड़कियां सपना जिसकी जन्म तिथि 10–10–1998 व निशा देवी जिसकी जन्म तिथि 5–8–2000 है जो ग्राम पंचायत जन्द्रोग के रिकार्ड में दर्ज नहीं है जिसे दर्ज किया जाए।

इस सम्बन्ध में सर्वसाधारण को बजरिया सूचित किया जाता है कि सपना व निशा देवी का नाम व जन्म तिथि पंचायत जन्द्रोग में दर्ज करने पर किसी को कोई उजर/एतराज हो तो वह दिनांक 1–1–2009 को असालतन या वकालतन हाजिर अदालत में होकर अपना एतराज दर्ज करवा सकता है। हाजिर न होने की सूरत में उपरोक्त नाम व जन्म तिथि पंजीकरण के आदेश दे दिए जायेंगे।

आज दिनांक 2–12–2008 को हमारे हस्ताक्षर व मोहर अदालत से जारी हुआ।

मोहर।

प्रताप सिंह ठाकुर,
कार्यकारी दण्डाधिकारी एवं तहसीलदार,
भटियात, चुवाड़ी, जिला चम्बा (हिं0 प्र0)।

IN THE COURT OF SHRI SURESHWAR THAKUR , PRESIDING JUDGE,
LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.

	Reference: No.107/2007
	Presented on:
	Decided on:10.3.2008
Smt. Basanti w/o Late Sh. Swaru Ram, R/O House No. 230/5. Palace Colony , Mandi, District Mandi, HP.Petitioner
Versus	
1. The Divisional Forest Officer, Forest Division, Mandi, H.P.	...Respondent.

ORDER/AWARD

10-3-2008 Pr. Petitioner in person.

Sh. H.S. Dhiman, Ld. Dy.D.A. for the respondent.

A statement has been made by the petitioner which is duly reduced into writing and signed by her in which she has stated that she would not be pursuing the instant matter before this Court. In light thereof, the instant reference be dismissed as withdrawn. Reference answered in the affirmative. Accordingly disposed off. The file after its due completion be consigned to the record room.

Announced

10-3-2008

Sd/

Sureshwar Thakur,
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

**IN THE COURT OF SHRI SURESHWAR THAKUR , PRESIDING JUDGE,
LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.**

Reference: No.169/2007
Presented on:
Decided on: 10.3.2008

Shri Kedar Singh s/o Sh. Sagar Dass, c/o Sh. Nand Lal Kaundal,
Legal Advisor (BMS), H.Q. Balak Rupi, P.O. Jalpehar, Tehsil
Joginder Nagar, District Mandi, H.P.

.....Petitioner

Versus		
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The Managing Director, M/s Hotel Snow Princess Manali,
District Kullu, HP.

...Respondent.

ORDER/AWARD

10-3-2008

Pr. Sh. N.L. Kaundal, A.R. for the Petitioner.

Sh. Sunder Goel, adv., vice csl. for the respondent.

Stated at the Bar by the A.R. for the petitioner that since the petitioner has expired during the pendency before this Court, hence, he would be not pursuing the instant matter in the name of the petitioner, since, deceased before this Court. Statement to the above fact is duly reduced into writing and signed by the A.R. for the petitioner. In light thereof, the instant matter is dismissed as withdrawn with the liberty as prayed for by the A.R. for the petitioner to seek a fresh reference from the appropriate authority to this court in the name of the L.R's deceased. Reference answered accordingly. Accordingly stands disposed off. The file after its due completion be consigned to the record room.

Announced

10-3-2008

Sd/

Sureshwar Thakur,
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

In the Court of the Presiding Judge, Labour Court-cum-Industrial Tribunal,
Dharamshala.

Sh. Baldev Singh Vs. The G.M. M/s. View Automobile

Ref. No. 199/07

12.3.2008 Pr. None for the petitioner
Sh. Vipul Bhardwaj Adv. for the respondent under
Power of Attorney.

The case has called twice or thrice but none appeared on the behalf of the petitioner. It is 11.30 A.M. Be put after lunch.

(Sd/-)

Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

12.3.2008 Pr. As above

The case has been called twice or thrice but none appeared on the behalf of the petitioner. It is 3.30 P.M. Hence, the case is dismissed in default. The Reference answered accordingly. The file after due completion be consigned to record room.

(Sd/-)
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

Announced:
12.3.2008

IN THE COURT OF SHRI SURESHWAR THAKUR , PRESIDING JUDGE,
LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.

Reference: No.131/2006
Presented on:
Decided on:20.3.2008

Shri Chuni Lal s/o Shri Jaharu Ram, Village Tawajan, P.O. Nandi,
Tehsil Chachiot, District Mandi,H.P.

....Petitioner

Versus	
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The Divisional Forest Officer, Nachan Forest Division, Gohar,
District Mandi, H.P.

...Respondent.

ORDER/AWARD

20-3-2008 Pr. Sh. Amar Chand Verma, Adv, for the Petitioner.

 Sh. H.S. Dhiman, Ld. Dy.D.A. for the respondent.

Stated at the Bar by the Ld. Csl. for the Petitioner that since the petitioner has come to be regularized, hence, he would not be pressing for an adjudication in the matter by this Court. Separate statements of the petitioner as well as the Ld. Csl. for the petitioner has been reduced into writing and signed by them respectively and which have been placed on record. In light thereof, the claim petition as well as the reference does not survive. Hence, the instant application is dismissed as withdrawn. Reference answered accordingly. The file after its due completion be consigned to the record room.

Announced

20-3-2008

Sd/

Sureshwar Thakur,
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

IN THE COURT OF SHRI SURESHWAR THAKUR , PRESIDING JUDGE,
LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.

	Reference: No.91/93
	Presented on:
	Decided on:24.3.2008
General Secretary, Employees Trade Union, Country Bottling Plant, Mehtpur, District Una, H.P. Petitioner	
Versus The General Manager, Desi Sharab Karkhana, Mehtpur, District Una, H.P. ...Respondent.	

ORDER/AWARD

24-3-2008 Pr. None for the Petitioner.

Sh. R.L. Kaith, Adv., for the respondent.

The Case has been called twice or thrice but none appeared on
the behalf of the petitioner. It is 11.30 A.M. Be put up after lunch.

Sd/
 Sureshwar Thakur,
 Presiding Judge,
 Labour Court-cum-Industrial
 Tribunal, Dharamshala, H.P.

24-3-2008 Pr. As above.

The Case has been called twice or thrice but none appeared on
the behalf of the petitioner. It is 3.30 P.M. Same the case has been
dismissed in default. The reference answered accordingly. The file
after due completion be consigned to the record room.

Announced
24-3-2008

Sd/
 Sureshwar Thakur,
 Presiding Judge,
 Labour Court-cum-Industrial
 Tribunal, Dharamshala, H.P.

In the Court of the Presiding Judge, Labour Court-cum-Industrial Tribunal,
Dharamshala.

The President Dharamsthal Karamchari Sangh Vs. The SDO Trust Baba Balak Nath
Temple
Ref. 174/07

31.3.2008 Pr. None

The case has been called on twice or thrice but none appeared on the behalf of the parties. It is 11.30 A.M. Be put after lunch.

(Sd/-)

Presiding Judge,

Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

31.3.2008 Pr. As above

The case has been called twice or thrice but none appeared on the behalf of the parties. It is 3.30 P.M. Same the case is dismissed in default. The reference answered accordingly. The file after due completion be consigned to the record room.

Announced:

31.3.2008

(Sd/-)

Presiding Judge,

Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

IN THE COURT OF SHRI SURESHWAR THAKUR , PRESIDING JUDGE,
LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.

		Reference: No.19/08
		Presented on:
		Decided on:3.4.2008
Sh. Hem Raj S/O Sh. Kashmir Singh, Village Rampur, Tehsil & District Una, H.P.	Petitioner
Versus		
The Executive Engineer, Transmission Division, HPSEB, Rakker, Una, District Una, H.P.		...Respondent.

ORDER/AWARD

3-4-2008 Pr. None for the Petitioner.

Sh. Pradeep Dogra, Adv.,, for the respondent.

The Case has been called twice or thrice but none appeared on the behalf of the petitioner. It is 11.30 A.M. Be put up after lunch.

Sd/
Sureshwar Thakur,
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

3-4-2008 Pr. As above.

The Case has been called twice or thrice but none appeared on the behalf of the petitioner. It is 3.30 P.M. Same the case has been dismissed in default. Reference answered accordingly. The file after due completion be consigned to the record room.

Announced
3-4-2008

Sd/
Sureshwar Thakur,
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

BEFORE SHRI SURESHWAR THAKUR, PRESIDING JUDGE, H.P.
INDUSTRIAL TRIBUNAL-CUM- LABOUR COURT , DHARAMSHALA,
DISTT, KANGRA H.P.

Reference: No 89/2004
(RBT 74/04)
Presented on 11-03-2008
Decided on 7.4.2008

Sh. Sohan Lal S/o Sh. Jawala Prasad R/o Village and P.O. Jagat Sukh, Tehsil, Manali, Distt. Kullu, H.P.Petitioner
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Executive Engineer, HPSEB Division, Manali, Distt. Kullu, H.P.Respondent
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Reference under section 10 of the Industrial Disputes Act, 1947.

For the petitioner	Petitioner in person
For the respondent	Sh. N.L. Kaundal, vice A.R.

AWARD

The hereinafter extracted reference has been received for rendition of award by this Tribunal:

“Whether the termination of services of Shri Sohan Lal S/o Shri Jawala Prasad, Ex. Daily wages beldar by the Additional Superintending Engineer, HPSEB (Electrical) Division, Manali, Distt. Kullu, H.P. w.e.f. 21.6.2000 without complying the provisions of the Industrial Disputes Act, 1947 and whereas junior to him are retained as alleged by the workman is proper and justified? If not, what relief of service benefits the above aggrieved workman is entitled to?”

In pursuance to the receipt of the hereinabove extracted reference, the claimant instituted a statement of claim before this Tribunal with the averment that he was engaged as a daily wage beldar by the respondent in the year 1995 and in that capacity he continued to work under the respondent upto February, 2000 on which date his services came to be disengaged by the respondent. The disengagement of the

services of the claimant by the respondent has been contended to be in violation of the mandatory statutory provisions, as also, in violation of the provisions of Sub Clause 2 of the Clause 14 of the Certified Standing Orders framed by the respondent, hence, the purported disengagement of the service of the claimant has been contended to be legally fallible. Therefore, it is asserted that the disengagement of the services of the claimant by the respondent being in violation of the mandatory statutory provisions, be, set aside and the respondent be directed to reinstate him in service together with affording to him all consequential benefits.

The claim petition was resisted and contended by the respondent by filing of a detailed reply, wherein in the preliminary objections, the respondents took the plea that not only the claim petition is not maintainable, but, also is bad for non-joinder of necessary parties.

On merits it was contended that the respondents never disengaged the services of the claimant, rather, the claimant abandoned his job, hence, in that light of the matter there is no occasion for the respondents to comply with the mandatory statutory provisions. Besides, it is denied that there has been any violation of provisions of Section 25(H) and 25(G) of the Industrial Disputes Act, 1947 hence, it is urged that resultantly the claim petition be dismissed.

The claimant filed a rejoinder to the reply of the respondents and controverted the controversial contentions in the reply of the respondent while reasserting the averments in the claim petition.

On the pleadings of the parties the following issues has been framed by this Tribunal between the contesting parties.

1. Whether the termination of service of petitioner by the respondent w.e.f. 21.6.2000 without complying the provisions of Industrial Disputes Act, 1947 and clause 14.2 of the certified standing orders of the respondents/Board and also in violation of section 25-G of Industrial Disputes Act, is illegal and un-justified as alleged? OPP
2. If issue no.1 is proved in affirmative, to what service benefits the petitioner is entitled to? OPP.
3. Whether the petitioner left the job at his own, if so its effect? OPR.
4. Whether the petition is not maintainable as alleged, if so its effect? OPR.
5. Whether the petition is bad for non-joinder of necessary parties? OPR.
6. Relief.

For the reasons to be recorded hereinafter while discussing the issues for determination, my findings on the aforesaid issues are as under;

Issue No.1	Partly yes, partly no,
Issue No.2	As per operative part
Issue No.3	No
Issue No.4	No
Issue No.5	Not pressed
Relief	As per operative part

REASONS FOR FINDINGS

Issues No. 1 and 2

Since both the above issues interconnected, hence, liable to be disposed of by common findings.

An application has been filed under section 151 CPC on behalf of the petitioner seeking decision afresh on the Reference, in light of direction contained in the certified copy of orders of the Hon'ble High Court of H.P. while deciding CWP No.1355/2006 titled as Executive Engineer Vs. Sohan Lal and another, which has been placed on record. Since the certified copy of orders of the Hon'ble High Court of H.P. has been placed on record by way of an application preferred by the Id. counsel for the petitioner belatedly, hence, I would proceed to decide the matter after having

allowed the application as preferred by the applicant, the same being formal in nature and also for ensuring compliance with the directions of the Hon'ble High Court.

Since the claimant has also asserted the infraction of the principle of 'Last Come First Go' by the respondent while disengaging him from service. In proof of the said infraction it is necessary to bear in mind an admission in the cross-examination of RW1 inasmuch as, therein there occurs an equivocal statement in the cross-examination of RW1 qua the factum of certain persons stated/averred by the claimant to be juniors to him and when is unequivocal qua the factum of their being continued to be retained by the respondent at the time contemporaneous to his disengagement, which, evidentially fact brings forth an infraction of the principle of 'Last Come First Go'. The reading of and an appraisal of the testimony of RW1 while disclosing the fact of the said persons ,may, or may not being juniors to the claimant is indicative of a tacit admission of the said persons being juniors to the claimant, as also, qua when the factum of their having been retained at the time contemporaneous to the disengagement from service of the claimant by the respondent, is also inferable on an appraisal of the cross-examination of RW1 cumulatively, besides, when for lack of adduction of the best evidence by the respondent demonstrative of the seniority of the claimant vis-à-vis the said juniors to the claimant, which lack of best evidence despite its being in possession of the respondent or being intentionally withheld also brings to the fore the fact that as a matter of fact the said persons were juniors to the claimant, hence, their retention highlights contravention of the principle of 'Last Come First Go'. Therefore, the disengagement from service of the claimant is illegal.

Issues decided accordingly.

Issues No.3 and 4

In light of the firm laid down by the Hon'ble Mr. Justice Rajiv Sharma while deciding CWP No.1117/2006 which had arisen against the Award of this Court in which the plea of delay and latches and its concomitant effect, on such an

unexplained/inordinate delay leading to the fading of the dispute had been considered and negated, therefore, any view contrary to the view taken by the Hon'ble High Court in the above case would be not sustainable. Also a similar view has taken by Hon'ble Justice Shri Rajiv Sharma while deciding CWP No.1117/2006 in which it was held that a delay of 13 in years that case was held to not fatal, therefore, in the instant case also where there is a delay of about 4 years and the Hon'ble Justice Shri Rajiv Sharma has held while deciding CWP NO.1117/2006 while referring to a judgment of the Hon'ble Apex Court in State of Punjab V. Anil Kumar, Judgment Today 2007 (7) SC 559 where there was a delay of 13 years and in which it was held that delay would affect only the quantum of or payment of backwages, to a disengaged workman and shall not be fatal to his claim for reinstatement, therefore, the delay which has taken place in the raising of the dispute in this case, would, in light of the above referred judgment of the Hon'ble Apex Court referred by Justice Shri Rajiv Sharma while deciding CWP No.1117/2006, would affect or impinge upon only the relief or quantum of backwages to be given to the workman.

Also the above view has been taken by the Hon'ble Justice Sanjay Karol while deciding CWP No.1542/2002 titled as HPFC vs. Garibu Ram where the Hon'ble Justice Sanjay Karol while considering a catena of rulings of the Hon'ble Apex Court in the concluding portion, held that in the absence of any provision for limitation it would not be open to the Court, to oust the Reference on the ground of delay.

Issue No.5

During the course of argument, this issue was not pressed before me, hence, this issue decided as unpressed.

Relief

Claim petition allowed. The respondent is directed to reengage the claimant in the same capacity in which he was rendering work for then prior to his disengagement so also, at the same place or in its vicinity. Besides, the break in service shall not affect

the seniority of the claimant. However, in light of the fact that no evidence has been adduced on record to demonstrate that the claimant was or was not gainfully employed during the period of his disengagement and when the petition is belated, hence, relief of back wages is denied. Reference answered accordingly.

Let a copy of this award be sent to the appropriate government for publication in the official gazette. The file after completion be consigned to the record room.

SD/-
Announced (Sureshwar Thakur)
7.4.2008 Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

BEFORE SHRI SURESHWAR THAKUR, PRESIDING JUDGE, H.P.
 INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT , DHARAMSHALA,
 DISTT. KANGRA H.P.

Reference: No 86/2004 (RBT 59/04)
Presented on : 11-03-2008
Decided on 7.4.2008

Sh. Girdhari Lal S/o Shri Jagdish Chand, R/o Village Jagat Sukh,
P.O. Jagat Sukh, Tehsil, Manali, Distt. Kullu, H.P.

.....Petitioner.

Versus

Executive Engineer, HPSEB Division, Manali, Distt. Kullu, H.P.

.....Respondents

Reference under section 10 of the Industrial Disputes Act, 1947.

For the petitioner	Petitioner in person.
For the respondent	Sh. N.L. Kaundal, vice A.R.

AWARD

The hereinafter extracted reference has been received for rendition of award by this Tribunal:

“Whether the termination of services of Shri Girdhari Lal S/o Shri Jagdish Chand, Ex. Daily wages (Electrical) Division, Manali, Distt. Kullu, H.P. w.e.f. 21.6.2000 without complying the provisions of the Industrial Disputes Act, 1947 and whereas junior to him are retained as alleged by the workman is proper and justified? If not, what relief of service benefits the above aggrieved workman is entitled to?”

In pursuance to the receipt of the hereinabove extracted reference, the claimant instituted a statement of claim before this Tribunal with the averment that he was engaged as a daily wage beldar by the respondent in the year 1997 and in that capacity he continued to work under the respondent upto November, 2000 on which

date his services came to be disengaged by the respondent. The disengagement of the services of the claimant by the respondent has been contended to be in violation of the mandatory statutory provisions, as also, in violation of the provisions of Sub Clause 2 of the Clause 14 of the Certified Standing Orders framed by the respondent, hence, the purported disengagement of the service of the claimant has been contended to be legally fallible. Therefore, it is asserted that the disengagement of the services of the claimant by the respondent being in violation of the mandatory statutory provisions, be, set aside and the respondent be directed to reinstate him in service together with affording to him all consequential benefits.

The claim petition was resisted and contended by the respondent by filing of a detailed reply, wherein in the preliminary objections, the respondents took the plea that not only the claim petition is not maintainable, but, also is bad for non-joinder of necessary parties.

On merits it was contended that the respondents never disengaged the services of the claimant, rather, the claimant abandoned his job, hence, in that light of the matter there is no occasion for the respondents to comply with the mandatory statutory provisions. Besides, it is denied that there has been any violation of provisions of Section 25(H) and 25(G) of the Industrial Disputes Act, 1947 hence, it is urged that resultantly the claim petition be dismissed.

The claimant filed a rejoinder to the reply of the respondents and controverted the controversial contentions in the reply of the respondent while reasserting the averments in the claim petition.

On the pleadings of the parties the following issues has been framed by this Tribunal between the contesting parties.

7. Whether the termination of service of petitioner by the respondent w.e.f. 21.6.2000 without complying the provisions of Industrial Disputes Act, 1947 and clause 14.2 of the certified standing orders of the respondents/Board and also in violation of section 25-G of Industrial Disputes Act, is illegal and un-justified as alleged? OPP
8. If issue no.1 is proved in affirmative, to what service benefits the petitioner is entitled to? OPP.
9. Whether the petitioner left the job at his own, if so its effect? OPR.
10. Whether the petition is not maintainable as alleged, if so its effect? OPR.
11. Whether the petition is bad for non-joinder of necessary parties? OPR.
12. Relief.

For the reasons to be recorded hereinafter while discussing the issues for determination, my findings on the aforesaid issues are as under;

Issue No.1	Partly yes, partly no,
Issue No.2	As per operative part
Issue No.3	No
Issue No.4	No
Issue No.5	Not pressed
Relief	As per operative part

REASONS FOR FINDINGS

Issues No.1 and 2

Since both the above issues interconnected, hence, liable to be disposed of by common findings.

An application has been filed under section 151 CPC on behalf of the petitioner seeking decision afresh on the Reference, in light of direction contained in the certified copy of orders of the Hon'ble High Court of H.P. while deciding CWP No.1357/2006 titled as Executive Engineer Vs. Girdhari Lal and another, which has been placed on record. Since the certified copy of orders of the Hon'ble High Court of H.P. has been placed on record by way of an application preferred by the Id. counsel

for the petitioner belatedly, hence, I would proceed to decide the matter after having allowed the application as preferred by the applicant, the same being formal in nature and also for ensuring compliance with the directions of the Hon'ble High Court.

Since the claimant has also asserted the infraction of the principle of 'Last Come First Go' by the respondent while disengaging him from service. In proof of the said infraction it is necessary to bear in mind an admission in the cross-examination of RW1 inasmuch as, therein there occurs an equivocal statement in the cross-examination of RW1 qua the factum of certain persons stated/averred by the claimant to be juniors to him and when is unequivocal qua the factum of their being continued to be retained by the respondent at the time contemporaneous to his disengagement, which, evidentially fact brings forth an infraction of the principle of 'Last Come First Go'. The reading of and an appraisal of the testimony of RW1 while disclosing the fact of the said persons may or may not being juniors to the claimant is indicative of a tacit admission of the said persons being juniors to the claimant, as also, qua when the factum of their having been retained at the time contemporaneous to the disengagement from service of the claimant by the respondent, is also inferable on an appraisal of the cross-examination of RW1 cumulatively. Besides, when for lack of adduction of the best evidence by the respondent demonstrative of the seniority of the claimant vis-à-vis the said juniors to the claimant, which lack of best evidence despite its being in possession of the respondent or being intentionally withheld also brings to the fore the fact that as a matter of fact the said persons were juniors to the claimant, hence, their retention highlights contravention of the principle of 'Last Come First Go'. Therefore, the disengagement from service of the claimant is illegal.

Issues decided accordingly.

Issues No. 3 and 4

In light of the firm laid down by the Hon'ble Mr. Justice Rajiv Sharma while deciding CWP No.1117/2006 which had arisen against the Award of this Court in which the

plea of delay and latches and its concomitant effect, on such an unexplained/inordinate delay leading to the fading of the dispute had been considered and negated, therefore, any view contrary to the view taken by the Hon'ble High Court in the above case would be not sustainable. Also a similar view has taken by Hon'ble Justice Shri Rajiv Sharma while deciding CWP No.1117/2006 in which it was held that a delay of 13 in years that case was held to not fatal, therefore, in the instant case also where there is a delay of about 4 years and the Hon'ble Justice Shri Rajiv Sharma has held while deciding CWP NO.1117/2006 while referring to a judgment of the Hon'ble Apex Court in State of Punjab V. Anil Kumar, Judgment Today 2007 (7) SC 559 where there was a delay of 13 years and in which it was held that delay would affect only the quantum of or payment of backwages, to a disengaged workman and shall not be fatal to his claim for reinstatement, therefore, the delay which has taken place in the raising of the dispute in this case, would, in light of the above referred judgment of the Hon'ble Apex Court referred by Justice Shri Rajiv Sharma while deciding CWP No.1117/2006, would affect or impinge upon only the relief or quantum of back wages to be given to the workman.

Also the above view has been taken by the Hon'ble Justice Sanjay Karol while deciding CWP No.1542/2002 titled as HPFC vs. Garibu Ram where the Hon'ble Justice Sanjay Karol while considering a catena of rulings of the Hon'ble Apex Court in the concluding portion, held that in the absence of any provision for limitation it would not be open to the Court, to oust the Reference on the ground of delay.

Issue No.5

During the course of argument, this issue was not pressed before me, hence, this decided as unpressed.

Relief

Claim petition allowed. The respondent is directed to reengage the claimant in the same capacity in which he was rendering work for then prior to his disengagement so

also, at the same place or in its vicinity. Besides, the break in service shall not affect the seniority of the claimant. However, in light of the fact that no evidence has been adduced on record to demonstrate that the claimant was or was not gainfully employed during the period of his disengagement and when the petition is belated, hence, relief of back wages is denied. Reference answered accordingly.

Let a copy of this award be sent to the appropriate government for publication in the official gazette. The file after completion be consigned to the record room.

Sd/-

Announced (Sureshwar Thakur)
7.4.2008 Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala.

BEFORE SHRI SURESHWAR THAKUR, PRESIDING JUDGE, H.P.
INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, DHARAMSHALA,
DISTT. KANGRA H.P.

Reference: No 39/2004 (RBT 62/04)
Presented on: 11-03-2008
Decided on 7.4.2008

Sh. Bhoop Singh S/o Sh. Bhagat Ram R/o Vill. Jabral, P.O. Baloh
Gokhra Tehsil, Sadar (Manali) Distt. Kullu, H.P.

.....Petitioner.

Versus

The Executive Engineer, Electrical Division, H.P.S.E.B, Manali,
H.P.

.....Respondent

Reference under section 10 of the Industrial Disputes Act, 1947.

For the petitioner	Sh. Akshay Pathania, vice adv.
For the respondent	Sh. N.L. Kaundal, vice A.R.

AWARD

The hereinafter extracted reference has been received for adjudication before this Tribunal from the competent authority:

“Whether the termination of services of Shri Bhoop Singh S/o Sh. Bhagat Ram, daily wages beldar by the Additional Superintending Engineer, H.P.S.E.B, Division, Manali, District Kullu, H.P. w.e.f. 20.2.2000 without complying the provisions of the Industrial Disputes Act, 1947 and Clause 14(2) of the Certified Standing Orders of the board, whereas junior to him are retained by the board is proper and justified? If not, what relief of service benefits and compensation the above aggrieved workman is entitled to?”

In pursuance to the receipt of the hereinabove extracted reference, the claimant instituted a statement of claim before this Tribunal with the averment that he was engaged as a daily wage beldar by the respondent on 1.7.1999 and in that capacity he continued to work under the respondent upto 20.2.2000 on which date his services came to be disengaged by the respondent. The disengagement of the services of the

claimant by the respondent has been contended to be in violation of the mandatory statutory provisions, as also, in violation of the provisions of Sub Clause 2 of the Clause 14 of the Certified Standing Orders framed by the respondent, hence, the purported disengagement of the service of the claimant has been contended to be legally fallible. Therefore, it is asserted that the disengagement of the services of the claimant by the respondent being in violation of the mandatory statutory provisions, be, set aside and the respondent be directed to reinstate him in service together with affording to him all consequential benefits.

The claim petition was resisted and contended by the respondent by filing of a detailed reply, wherein in the preliminary objections, the respondents took the plea that only the claim petition is not maintainable, but, also is bad for non-joinder of necessary parties.

On merits it was contended that the respondents never disengaged the services of the claimant, rather, the claimant abandoned his job, hence, in that light of the matter there is no occasion for the respondents to comply with the mandatory statutory provisions. Besides, it is denied that there has been any violation of provisions of Section 25(H) and 25(G) of the Industrial Disputes Act, 1947 hence, it is urged that resultantly the claim petition be dismissed. The claimant filed a rejoinder to the reply of the respondents and controverted the controversial contentions in the reply of the respondent while reasserting the averments in the claim petition.

On the pleadings of the parties, this Tribunal framed the following issues between the parties at contest:

- respondents/Board and also in violation of section 25-G of Industrial Disputes Act, is illegal and un-justified as alleged? OPP.
2. If issue no.1 is proved in affirmative, to what service benefits the petitioner is entitled to? ...OPP
 3. Whether the petition is not maintainable as alleged, if so its effect? OPR.
 4. Whether the petition is not maintainable as alleged, if so its effect? OPR.
 5. Whether the petition is bad for non-joinder of necessary parties? OPR
 6. Relief.

For the reasons to be recorded hereinafter while discussing the issues for determination, my findings on the aforesaid issues are as under:

Issue No.1	Partly yes, partly no
Issue No.2	As per operative part
Issue No.3	No
Issue No.4	No
Issue No.5	Not pressed
Relief	As per operative part

REASONS FOR FINDINGS

Issues No.1 and 2

Since both these issues are interlinked, hence, taken up together for determination.

An application has been filed under section 151 CPC on behalf of the petitioner seeking decision afresh on the Reference, in light of direction contained in the certified copy of orders of the Hon'ble High Court of H.P. while deciding CWP No.1356/2006 titled as Executive Engineer Vs. Bhoop Singh and another, which has been placed on record. Since the certified copy of orders of the Hon'ble High Court of H.P. has been placed on record by way of an application preferred by the Id. counsel for the petitioner belatedly, hence, I would proceed to decide the matter after having allowed the application as preferred by the applicant, the same being formal in nature and also for ensuring compliance with the directions of the Hon'ble High Court.

Since the claimant has also asserted the infraction of the principle of 'Last Come First Go' by the respondent while disengaging him from service. In proof of the said infraction it is necessary to bear in mind an admission in the cross-examination of

RW1 inasmuch as, therein their occurs an equivocal statement in the cross-examination of RW1 qua the factum of certain persons stated/averred by the claimant to be juniors to him and when is unequivocal qua the factum of their being continued to be retained by the respondent at the time contemporaneous to his disengagement, which, evidentially fact brings forth an infraction of the principle of 'Last Come First Go'. The reading of and an appraisal of the testimony of RW1 while disclosing the fact of the said persons may or may not being juniors to the claimant is indicative of a tacit admission of the said persons being juniors to the claimant, as also, qua when the factum of their having been retained at the time contemporaneous to the disengagement from service of the claimant by the respondent, is also inferable on an appraisal of the cross-examination of RW1 cumulatively, besides, when for lack of adduction of the best evidence by the respondent demonstrative of the seniority of the claimant vis-à-vis the said juniors to the claimant, which lack, of, best evidence despite its being in possession of the respondent or being intentionally withheld also brings to the fore the fact that as a matter of fact the said persons were juniors to the claimant, hence, their retention highlights contravention of the principle of 'Last Come First Go'. Therefore, the disengagement from service of the claimant is illegal. Issues decided accordingly.

Issues No. 3 and 4

In light of the firm laid down by the Hon'ble Mr. Justice Rajiv Sharma while deciding CWP No.1117/2006 which had arisen against the Award of this Court in which the plea of delay and latches and its concomitant effect, on such an unexplained/inordinate delay leading to the fading of the dispute had been considered and negated, therefore, any view contrary to the view taken by the Hon'ble High Court in the above case would be not sustainable. Also a similar view has taken by Hon'ble Justice Shri Rajiv Sharma while deciding CWP No.1117/2006 in which it

was held that a delay of 13 in years that case was held to not fatal, therefore, in the instant case also where there is a delay of about 4 years and the Hon'ble Justice Shri Rajiv Sharma has held while deciding CWP NO.1117/2006 while referring to a judgment of the Hon'ble Apex Court in State of Punjab V. Anil Kumar, Judgment Today 2007 (7) SC 559 where there was a delay of 13 years and in which it was held that delay would affect only the quantum of or payment of backwages, to a disengaged workman and shall not be fatal to his claim for reinstatement, therefore, the delay which has taken place in the raising of the dispute in this case, would, in light of the above referred judgment of the Hon'ble Apex Court referred by Justice Shri Rajiv Sharma while deciding CWP No.1117/2006, would affect or impinge upon only the relief or quantum of backwages to be given to the workman.

Also the above view has been taken by the Hon'ble Justice Sanjay Karol while deciding CWP No.1542/2002 titled as HPFC vs. Garibu Ram where the Hon'ble Justice Sanjay Karol while considering a catena of rulings of the Hon'ble Apex Court in the concluding portion, held that in the absence of any provision for limitation it would not be open to the Court, to oust the Reference on the ground of delay.

Issue No. 5

During the course of argument, this issue was not pressed before me, hence this issue decided as unpressed.

Relief

Claim petition allowed. The respondent is directed to reengage the claimant in the same capacity in which he was rendering work for then prior to his disengagement so also, at the same place or in its vicinity. Besides, the break in service shall not affect the seniority of the claimant. However, in light of the fact that no evidence has been adduced on record to demonstrate that the claimant was or was not gainfully employed during the period of his disengagement and when the petition is belated, hence, relief of back wages is denied. Reference answered accordingly.

Let a copy of this award be sent to the appropriate government for publication in the official gazette. The file after completion be consigned to the record room.

Sd/-

Announced
7.4.2008

(Sureshwar Thakur)
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala.

BEFORE SHRI SURESHWAR THAKUR, PRESIDING JUDGE, H.P.
 INDUSTRIAL TRIBUNAL-CUM- LABOUR COURT, DHARAMSHALA,
 DISTT . KANGRA H.P.

Reference: No 67/2003
Presented on: 27-2-2003
Decided on 7.4.2008

Shri Moti Ram S/o Shri Karam Singh R/o Vill. Tharla, P.O. Jaion,
 Tehsil, Nirmand, Distt. Kullu, H.P.

.....Petitioner.

Versus

- | | |
|--|----------------|
| 1. Secretary HPSEB Vidyut Bhawan Shimla-4. | |
| 2. Executive Engineer, HPSEB, Division Anni, Distt. Kullu,
H.P. | ...Respondents |

Reference under section 10 of the Industrial Disputes Act, 1947.

For the petitioner	Petitioner in person
For the respondent	Sh. N.L. Kaundal, vice A.R.

AWARD

The hereinafter extracted reference has been received for adjudication before this
 Tribunal from the competent authority:

“Whether the termination of services of Shri Moti Ram S/o Shri Karam Singh, daily
 wages beldar by the Executive Engineer H.P.S.E.B., Division, Anni, District Kullu,
 H.P. w.e.f. 16.7.1995 without complying the provisions of the Industrial Disputes Act,
 1947 is proper and justified? If not, what relief of service benefits the aggrieved
 workman is entitled to?”

In pursuance to the receipt of the hereinabove extracted reference, the claimant
 instituted a statement of claim before this Tribunal, the contents of claim petition are
 extracted ad-verbatim.

“1. That the applicant was initially engaged on daily wages beldar w.e.f. 13 Dec. 1994 to the respondent Division under section Bagi-Pul and the applicant kept on discharging his duty as such till 26.7.95 when the services of the applicant was orally terminated without serving any notice as per the provisions of Industrial Dispute act and the standing orders.

2. That it is relevant to mention here that the respondent authorities have retained the services of the persons who are much junior to the applicant and thus has once again violated the provisions of section 25-G & H of the Industrial Disputes Act, 1947 and vis-à-vis also violated the provisions of Industrial Standing order as formulated by the HPSEB Department to the category of the workmen just like the petitioner and for the same the respondent required to serve a notice as prescribed under sub clause 14 (2) of the Industrial Standing Order even than the workman has not completed 240 days the respondent is obligatory to issue the issue before terminating the services of the workman.

3. That the respondents ought to have issued casual cards in favour of the applicant and should have also issued M. Rolls thus the non-compliance of these have also rendered the oral termination of the applicant as illegal in effective in the eyes of law.

4. That the present applicant belongs to very poor family and was the only bread earner of his family. And now by way of this illegal and oral termination dated 26.7.95 the applicant was left no other option rather than to raise the Industrial dispute by challenging this illegal verbal terminations. The conciliation proceedings failed due to unreasoned and non cooperative attitude of the respondents and thus the applicant suffered unnecessarily for last 7-8 years and the result of the same the Govt. referred the dispute to this Hon'ble Court to be decided the same on merits.

5. That contents of the reference are as under:-

“Whether the termination of services of Shri Gulab Singh S/o Shri Nika Ram, daily wages beldar by the Executive Engineer, HPSEB Division, Anni Distt. Kullu, H.P. w.e.f.26.7.95 without complying the provisions of the Industrial dispute Act, 1947 is proper and justified? If not, what relief of service benefits the aggrieved workman is entitled to?”

SUBMISSIONS OF ISSUES REFERRED TO THIS COURT

1. That the area of dispute under reference is clearly defined as to whether the termination of the petitioner after completion of 240 days services without giving any notice under section 25(F) of I.D. Act and even also without assigning any cogent reasons and also serving a notice of 10 days as per the provisions of Rule (14) 2 of the Industrial Establishment (Standing Orders) Act, 1946. Not only this the services of applicant are terminated without giving the retrenchment compensation and the requisite notice which were required to be served in accordance with law. The respondents have failed to pay the retrenchment compensation and the salary in lieu of the provisions of the I.D. Act as such the order of oral termination is illegal void and as such is liable to be quashed.

2. That the respondents has also violated the principle of I.D. Act by recruiting the fresh persons in place of the applicant and never offer employment to the applicant despite many requests and reminders made by the petitioner/applicant time and again. The respondents has also not maintained the seniority of the applicant as required under the provisions of Industrial Disputes Act.

It is, therefore, requested that in view of the aforesaid submissions the reference may be answered in favour of the applicant and appropriate directions and reliefs as prayed above may be granted in favour of the applicant along with all benefits, and justice be done.”

The respondent contested the claim petition and filed a detailed reply. The contents of reply as furnished by the respondent to the claim petition are reproduced ad-verbatim hereinafter:-

"Preliminary objections:-

1. That the present claim petition is not maintainable in the present form.
2. That the present claim petition is patently time barred and as such it is not maintainable against the replying respondents.
3. That the petitioner is not a workman within the ambit and definition of Industrial Dispute Act, 1947 and as such he is not entitled to any relief from this Hon'ble Court.

Reply on merits:-

1. That the contents of para 1 of the claim petition are wrong and hence denied. It is specifically denied that the applicant was initially engaged on daily wages beldar w.e.f. 13 December, 1994 till 26.7.95. It is specifically denied that the services of the applicant was orally terminated and without serving any notice as per the provisions of Industrial Disputes Act and standing order. It is worthwhile to submit here that the applicant was initially engaged as beldar w.e.f. 26.12.93 to 25.4.94 and the applicant worked with the replying respondent till 25.4.94 with certain interruption and breaks. It is submitted that the applicant was engaged for specific works .The services of the applicant automatically came to an end on the completion of the work. The question of termination does not arise. The applicant had also not completed 240 days in a proceedings 12 months and as such no notice as per the provisions of Industrial Disputes Act is required to be served to the applicant.
2. That the contents of para 2 of the claim are wrong and hence denied. It is denied that the replying respondent have retained the services of the persons much juniors to the applicant. It is also denied that the replying respondents have violated the provisions of section 25-G & H of the Industrial Disputes Act, 1947 and provisions of the standing order formulated by the HPSEB. As submitted supra, the applicant was engaged for specific work and the services of the applicant automatically came to an end on the completion of the work. Moreover, the applicant had not completed 240 days in a proceedings 12 months. It is submitted that there is no violation of Industrial Disputes Act, 1946. The applicant was not to be served with 10 days notice since the applicant was engaged for specific work and after the completion of work his services automatically came to an end. It is evident from the mandays chart annexed as Annexure A-1.
3. That the contents of para 3 of the claim are also wrong and hence denied. As submitted supra, the applicant was engaged for specific work and the services of the applicant automatically came to an end after the completion of work, and as such it does not rendered oral termination. The applicant be put strick proof with respect the same.
4. That the contents of para 4 of the claim are wrong and hence denied. It is pertinent to mention here that the applicant had raised this dispute after lapse of 9 years and had not explained the reasons with respect the same. The present claim petition is barred by delay and laches and thus the applicant is not entitled for any relief from this Hon'ble Court.
5. In reply of para 5 of the claim it is submitted that the claim petition is not maintainable in view of the detailed reply given above. It is pertinent to mention here that the applicant is not entitled for any service benefit in view of the detailed reply given above.

In view of the above facts and circumstances, it is most respectfully prayed that the claim of the applicant may kindly be dismissed with costs.”

On the pleadings of the parties, this Tribunal framed the following issues:

1. Whether the termination of services of petitioner Moti Ram dailyw ages beldar by the respondent w.e.f. 26.7.1995 without complying the provisions of Industrial Disputes Act, is proper and justified? OPP
2. If issue No.1 is not proved to what relief of services benefits, the workman is entitled to? OPP
3. Whether the petition is not maintainable? OPR
4. Whether the petition is time barred? OPR
5. Whether the petitioner is not a workman as alleged? OPR
6. Relief.

For the reasons to be recorded hereinafter while discussing the issues for determination, my findings on the aforesaid issues are as under:

Issue No.1	No
Issue No.2	As per operative part
Issue No.3	No
Issue No.4	No
Issue No.5	Not pressed
Issue No.6	Claim petition allowed.

REASONS FOR FINDINGS

Issues No. 1 and 2

Since both the issues are interlinked, hence, taken up together for determination.

The instant case has been received by way of remand from Hon'ble High Court of H.P. vide its order dated 25.7.2007 while deciding the CWP No.1386 of 2005 which CWP came to be instituted before it against the Award rendered by this Tribunal in Reference No.67/2003.

In proof of averments and assertions made in the claim petition by the claimant the claimant stepped into the witness box and has supported his assertions made in the claim petition and has during the course of his examination-in-chief tendered into evidence his affidavit bearing Ex. PW1/A. However, the uncorroborated testimony of the claimant is insufficient to convince this Tribunal, that the claimant had rendered the necessary period of qualifying service under the respondent for his being entitled to seek the benefits of the provisions of section 25-F of the Industrial Disputes Act

whose provisions are extracted hereinafter. On a perusal of the hereinafter extracted provisions of section 25-F of the Industrial Disputes Act it is apparent that it is enjoined upon the claimant, that, he render 240 days continuous service in the 12 calendar months preceding his disengagement which period of service has to be rendered in continuity, unless, for lawful reasons as detailed in the provisions of section 25-B of the Industrial Disputes Act whose provisions define "continue service" which provisions are also, extracted hereinafter, the breaks, in, the continuity of service are ascribable to any reason being then owing to any fault on the part of workman. Since perusal of Ex. RW1/A which is the mandays chart with respect to the work performed by the claimant under the respondent and which having such been prepared during the discharge of official duties by a public servant they enjoy a presumption of truth which presumption has not been rebutted hence, its contents assume conclusiveness as and with their being no evidence to rebut the same having been adduced, conveying, that the claimant did render "continuous service" in the manner enjoined by law, inasmuch, as he rendered work with condonable legal breaks under the respondent, hence, then, when with their being even breaks in the continuity of his service under the respondent in each of the 12 calendar months preceding his disengagement and when the said breaks or interruptions in service has not been shown by satisfactory evidence to be on account of cessation of work or on account of illness or sickness of the claimant, hence, condonable otherwise also being wholly on account of such breaks in service being occasioned by non availability of work, obviously, when the breaks have been when proved to be not intentionally administered also when there is no conclusive evidence to believe the view of the respondent that he was engaged against works purely casual nature existed in period of time, while intermittently ceasing the engagement of the claimant on such cessor of works hence, the intermittent cessor in the engagement of the claimant under the respondent is to be imputed to his abstention from work and not to only intentionally

administered fictional illegal breaks. Consequently, when there is abysmal failure on the part of the claimant to demonstrate the he had rendered 240 days of continuous service under the respondent in the 12 calendar months his disengagement, rather, for the reasons ascribed, hereinabove upon Ex. RW1/A achieving conclusiveness for lack of evidence in rebuttal having come to be adduced by the petitioner, consequently, with their demonstrating lack of fulfillment of the criteria stipulated in the provisions of section 25-F of the Industrial Disputes Act for the claimant to enjoy its benefits, accordingly, the retrenchment of the services of the claimant even by a verbal order and without any notice does not infringe any of the rights of the claimant. The plea of abandonment of job by the claimant, as, raised by the respondent, is, untenable as, no evidence qua the factum of the claimant having worked elsewhere or his having such financial resources so as not to require his job, which, affirmative evidence in case adduced would alone have bolstered such a conclusion, its, dearth, obviously, renders the plea unsustainable.

25F. Conditions precedent to retrenchment of workmen- No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until-

- (a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice;
- (b) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average [pay for every completed year of continuous service] or any part thereof in excess of six months; and
- (c) notice in the prescribed manner is served on the appropriate Government [or such authority as may be specified by the appropriate Government by notification in the Official Gazette].

25 (B). Definition of continuous service.- For the purposes of this Chapter,-

(1) a workman shall be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorized leave or an accident or a strike which is not illegal, or a lock-out or a cessation or work which is not due to any fault on the part of the workman;

(2) where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer.-

- (a) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than-
 - (i) one hundred and ninety days in the case of a workman employed below ground in a mine; and
 - (ii) two hundred and forty days, in any other case;
- (b) for a period of six months, if the workman, during a period of six calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than-
 - (i) ninety-five days, in the case of workman employed below ground in a mine; and
 - (ii) one hundred and twenty days, in any other case.

Explanation.- For the purposes of clause (2), the number of days on which a workman has actually worked under an employer shall include the days on which-

- (i) he has been laid-off under an agreement or as permitted by standing orders made under the Industrial Employment (Standing Order) Act, 1946 (20 of 1946), or under the Act or under any other law applicable to the industrial establishment;
- (ii) he has been on leave with full wages, earned in the previous years;
- (iii) he has been absent due to temporary disablement caused by accident arising out of and in the course of his employment; and

in the case of a female, she has been on maternity leave; so, however, that the total period of such maternity leave does not exceed twelve weeks.

Since the claimant has also asserted the infraction of the principle of 'Last Come First Go' by the respondent while disengaging him from service. In proof of the said infraction it is necessary to bear in mind an admission in the cross-examination of RW1 inasmuch as, therein their occurs an equivocal statement in the cross-examination of RW1 qua the factum of certain persons stated/averred by the claimant to be juniors to him and who is equally equivocal qua the factum of their being continued to be retained by the respondent at the time contemporaneous to his disengagement, which, equivocation brings forth an infraction of the principle of 'Last Come First Go'. The occurrence of an equivocal statement on the said facets during the cross-examination of RW1 disclosing the fact of the said persons may or may not being juniors to the claimant is indicative of a tacit admission of the said persons being juniors to the claimant, as also, qua the factum of their having been retained at the time contemporaneous to the disengagement from service of the

claimant by the respondent, a fact inferable not only from the said equivocal statement occurring in the cross-examination of RW1, but, also from the lack of adduction of the best evidence by the respondent demonstrative of the seniority of the claimant vis-à-vis the said juniors to the claimant on qua their retention in service by the respondent at the time contemporaneous to the disengagement of the claimant, which lack of best evidence despite its being in possession of the respondent also brings to the fore the fact that as a matter of fact the said persons were juniors to the claimant, hence, their retention highlights contravention of the principle of 'Last Come First Go'. Therefore, the disengagement from service of the claimant is illegal. Issues decided accordingly.

Issues No.3 & 4

In light of the firm laid down by the Hon'ble Mr. Justice Rajiv Sharma while deciding CWP No.1117/2006 which had arisen against the Award of this Court in which the plea of delay and latches and its concomitant effect, on such an unexplained/inordinate delay leading to the fading of the dispute had been considered and negated, therefore, any view contrary to the view taken by the Hon'ble High Court in the above case would be not sustainable. Also a similar view has been taken by Hon'ble Justice Shri Rajiv Sharma while deciding CWP No.1117/2006 in which it was held that a delay of 13 years that case was held to not fatal, therefore, in the instant case also where there is a delay of about 9 years and the Hon'ble Justice Shri Rajiv Sharma has held while deciding CWP NO.1117/2006 while referring to a judgment of the Hon'ble Apex Court in State of Punjab V. Anil Kumar, Judgment Today 2007 (7) SC 559 where there was a delay of 13 years and in which it was held that delay would affect only the quantum of or payment of backwages, to a disengaged workman and shall not be fatal to his claim for reinstatement, therefore, the delay which has taken place in the raising of the dispute in this case, would, in light of the above referred judgment of the Hon'ble Apex Court referred by Justice

Shri Rajiv Sharma while deciding CWP No.1117/2006, would affect or impinge upon only the relief or quantum of backwages to be given to the workman.

Also the above view has been taken by the Hon'ble Justice Sanjay Karol while deciding CWP No.1542/2002 titled as HPFC vs. Garibu Ram where the Hon'ble Justice Sanjay Karol while considering a catena of rulings of the Hon'ble Apex Court in the concluding portion, held that in the absence of any provision for limitation it would not be open to the Court, to oust the Reference on the ground of delay.

Issue No.5

During the course of argument, this issue was not pressed before me, hence, this decided as unpressed.

Relief

Claim petition allowed. The respondent is directed to reengage the claimant in the same capacity in which he was rendering work for then prior to his disengagement so also, at the same place or in its vicinity. Besides, the break in service shall not affect the seniority of the claimant. However, in light of the fact that no evidence has been adduced on record to demonstrate that the claimant was or was not gainfully employed during the period of his disengagement and when the petition is belated, hence, relief of back wages is denied. Reference answered accordingly.

Let a copy of this award be sent to the appropriate government for publication in the official gazette. The file after completion be consigned to the record room.

Sd/-

Announced
7.4.2008

(Sureshwar Thakur)
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala.

IN THE COURT OF SHRI SURESHWAR THAKUR , PRESIDING JUDGE,
LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.

Reference: No.144/2006
Presented on:
Decided on: 10.4.2008

Sh. Jeevan Dev S/O Sh. Chunka Ram,Village Nog, P.O. Bagi
Binola, Tehsil Sadar District Bilaspur, H.P.

.....Petitioner

Versus

M/s Amar Tyres Himachal 23, Industrial Area, Bilaspur, District
Bilaspur, H.P.

...Respondent.

ORDER/AWARD

10-4-2008

Pr. Sh. S.S. Sippy, A.R. for the petitioner.

Sh. Dinesh Gautam, A.R. for the respondent.

The A.R. for the petitioner has placed on record an affidavit the perusal of whose contents disclose that an amicable settlement qua the disputes comprised in the application as has arisen between the parties at lis has been settled. In light thereof, considering the statement, the A.R. for the petitioner who has stated in the separate statement which is duly reduced into writing and signed by him that, as such, he does not want to proceed with the application, hence, seeks liberty to withdraw the same. Consequently the application is dismissed as withdrawn. Reference answered accordingly. The file after its due completion be consigned to the record room.

Announced

10-4-2008

Sd/

Sureshwar Thakur,
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

**IN THE COURT OF SHRI SHER SINGH SEN, PRESIDING JUDGE, LABOUR
COURT-CUM-INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.**

Reference: No.31/2007
Presented on:
Decided on: 2.5.2008

Shri Vivek Verma s/o Sh. S.C. Verma, R/O Village & P.O. Ichni,
Tehsil & District Kangra, H.P.

.....Petitioner

Versus		
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1. The Chairman/Secretary, Army School, Yol Cantt, Tehsil Dharamshala, District Kangra, H.P.

2. Principal, Army School, Yol Cantt, Tehsil Dharamshala, District Kangra, H.P.

...Respondents.

ORDER/AWARD

2-5-2008 Pr. Sh. K.K. Chaudhary, adv., counsel for the petitioner.
 Sh. Arvind Sharma, adv., alongwith Sh. A.K. Ambastha
 Principal, Army School Yol Cantt. A.R. for the respondent.

Ld. counsel for the petitioner has withdrawn the petition, vide his separate statement. Hence, the claim petition is dismissed as withdrawn. The Reference is answered accordingly. A copy of this order be sent to the Labour Commissioner, Shimla, H.P. for information. The file after completion be consigned to records.

Announced

2-5-2008

Sd/

(S.S.Sen)

Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

BEFORE SHRI SURESHWAR THAKUR, PRESIDING JUDGE, H.P.
INDUSTRIAL TRIBUNAL-CUM- LABOUR COURT, DHARAMSHALA,
DISTT . KANGRA H.P. (CAMP AT MANDI)

Reference: No.353/2003
RBT No. 178/06
Presented on: 26.12.2003
Decided on: 19.3.2008

Sh. Praveen Singh S/o Sh. Rattan Chand R/o VPO Gheen, Tehsil,
Baroh, Distt. Kangra, H.P.

.....Petitioner.

Versus

1. Himachal Pradesh State Forest Corporation Ltd. Shimla through its Managing Director
2. Divisional Manager, H.P. State Forest Division Dharamshala, Distt. Kangra, H.P.

...Respondents

Reference under section 10 of the Industrial Disputes Act, 1947.

For the petitioner	Petitioner in person
For the respondent	Sh. Vivek Vashist, Adv.

AWARD

The hereinafter extracted reference has been received for adjudication before this
Tribunal from the competent authority:

In pursuance to the receipt of the hereinabove extracted reference, the claimant instituted a statement of claim before this Tribunal, the contents of claim petition are extracted ad-verbatim.

“1. That the petitioner was initially engaged as a chowkidar on daily wage basis on 1.1.1989 by the respondent no.2. After his engagement as a chowkidar, the petitioner worked at his place of posting i.e. Ranital Office at field Jawalamukhi Surani and Lanj Kuoman, H.P. wherein, the petitioner continued worked without any break till 30.4.1989, after which the petitioner was transferred to Dharamshala division.

2. That on 1.5.1989, the petitioner joined his duties in the office of respondent no.2 i.e. the office of Divisional Manager H.P. State Forest Corporation Division Dharamshala. The petitioner remained posted as a daily waged Chowkidar in that office of respondent no. 2 till 30.12.1989.

3. That the petitioner was again transferred by the respondent to Khridi Depot, H.P. State Forest Corporation under the Assistant Manager H.P. State Forest Corporation, Range Ranital. In pursuance to his transfer order, the petitioner joined at Khridi Depot on 1.1.1990 and worked continuously as a chowkidar on daily wage basis till 31.3.1990 to the utter satisfaction of the respondents.

4. That it is relevant to mention here at this stage, that when the petitioner was working in the office of respondent no.2 and later at Khridi depot, the petitioner was not paid with his wages for the work which he had done under the respondent no.2 and Assistant Manager, H.P. State Forest Corporation Range Ranital i.e. w.e.f. 1.5.1989 to 31.3.1990 for about 11 months. Not only this, the services of the petitioner was terminated illegally without following the relevant provisions of Industrial Disputes Act, 1947 as contained under Chapter V-B of the said Act w.e.f. 31.3.1990. Since, the said termination/retrenchment and withholding of wages of the petitioner tantamounts to illegality hence this action of the respondents is void-ab-initio, therefore the petitioner is entitled to be reengaged with full back wages and continuity in service.

5. That section 25-N of the Industrial Disputes Act, provides for conditions precedent to the retrenchment of workman. The said section bares the retrenchment of a workman until he has been given three months notice in writing indicating the reasons for retrenchment or in lieu of the said notice, the workman is paid wages for the period of notice. The second condition precedent is proper permission of the appropriate Government or such authority has provided under the Act. In the instant case, the respondent corporation has not at all complied with the conditions precedent as provided under section 25-N of the Act, and therefore, the retrenchment/termination of the service of the petitioner is void-ab-initio and petitioner is entitled to be declared to have continued in service with full back wages and seniority.

6. That even section 25-F of the Industrial Disputes Act, provides for conditions precedent to the retrenchment of workmen. The said section bares the bars the retrenchment of a workman until he has been given one month notice in writing indicating the reasons for retrenchment or in lieu of the said notice, the workman is paid wages for the period of notice. The second condition precedent is proper permission of the appropriate Government or such authority has provided under the Act. In the instant case, the respondent corporation has not at all complied with the conditions precedent as provided under section 25-F of Act, and therefore the retrenchment/termination of the service of the petitioner is void-ab-initio and

petitioner is entitled to be declared to have continued in service with full back wages and seniority.

7. That the Himachal Pradesh State Forest Corporation Constitutes one unit for the purpose of seniority. There is only one Managing Director who is the Chief Executive of the Corporation. The different Divisions are created only for administrative convenience but the control remains with the Head office of the Corporation which is situated at Shimla. All the finances including the preparation of salary bills, collection of sale proceeds and further disbursement of the amount of different Divisions are made from Head office at Shimla. The different Divisions under respondent Corporation have no independent existence as the same are dependant upon the Head office virtually for all matters including finance, administrative directions, appointments, transfers and disciplinary proceedings etc. A regular employees of the corporation is liable to be transferred any where in Himachal Pradesh irrespective of the Divisions. As pointed out in earlier part of this para, the main work of the Respondent Corporation is to convert the timber into logs and transport the same to the different sale depots established by the respondent corporation and sell the same. Therefore, the sale proceeds from the concerned sale depots are transmitted to the Head Office and from Head office only the amount is further allocated to a particular Division for making payment to a concerned party, Contractor with whom that particular Divisions may have contractual dealing. In these circumstances it cannot be said that each division under the respondent Corporation form a separate unit for the purpose of seniority. If the later submission regarding separate seniority for each Division is accepted it may create anomalous situation where in a particular Division of the respondent Corporation, a much senior person may be disengaged for want of work whereas in the other division much junior persons may be retained as there may be work available for him in the said division. The practical example is too available in the instant case as the junior persons are working in the adjoining area/circle of the Dharamshala Division. Thus, for the purpose of seniority, it is humbly submitted that the seniority of the petitioner is to be reckoned on the assumption that whole of the Himachal Pradesh State Forest Corporation constitutes only one unit.

8. That after the verbal termination of the petitioner, he made several requests seeking re-employment by visiting the office of the respondents number of times but in turn he was every time assured that as and when his services would be required, he will be called but the respondents chose not to offer employment to the petitioner. On the contrary the respondents retained and engaged the services of the juniors. Not only this, the persons who were engaged along with me on 1.1.1989 and thereafter have been regularized by the respondents. The petitioner's services were terminated in violation of section 25-H prescribes that a retrenched workman must be given an opportunity of reemployment when the employer has to employ an additional hand. But in the instant case this provisions has been totally ignored by the respondents and have given the employment to the fresh junior persons.

9. That the respondents while terminating the services of the petitioner have grossly and palpably violated the well settled principles of law and provisions of both Industrial Disputes Act, 1947 and Industrial Employment (Standing Orders) Act, 1946. The petitioner was ultimately compelled to raise industrial disputes, challenging the verbal termination order. The conciliation meetings failed due to unreasoned attitude of the respondents and the appropriate Government referred the dispute to this Hon'ble Court. The import of the terms of reference is:-

"Whether the termination of the services of Sh. Praveen Singh s/o Sh. Rattan Chand worker, by the Divisional Manager, H.P. State Forest Division Dharamshala, Distt. Kangra, HP. w.e.f. 31.3.1990 without complying the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, what relief of service benefits and compensation the above workman is entitled to?"

10. SUBMISSION OF ISSUES REFERRED TO THIS HON'BLE COURT:

1. That the Dispute under reference is as to whether the termination of the petitioner even after completion of 240 days service without notice, retrenchment compensation is legal or illegal. The respondents terminated the petitioner without serving requisite notice which they were required to serve in accordance with law. The respondents also failed to pay salary in lieu of notice and as such, the order of termination is illegal, void besides being void-ab-initio and as such, is liable to be quashed.
2. That the respondents have also failed to tender retrenchment compensation on account of service rendered by the petitioner to which he was entitled to and as such, the termination order is bad in law.
3. That the respondents after termination of the petitioner, recruited several fresh hands and never offered employment to the petitioner despite requests made by the petitioner time and again. Not only this the respondents have also indulged themselves in illegal activities as the preferential right and legitimate right of the petitioner were ignored, whereas, they regularized many persons who are similarly situated as well as junior to the petitioner. Even the petitioner's seniority has not been determined by the respondents inspite of the fact, the petitioner has completed 240 days service prior to termination of service. The respondents are required to maintain the seniority of the workman and offer employment on that basis. But in the instant case the respondents failed to discharge their statutory duty. Therefore, the respondents may be directed to produce the entire record maintained in their office. It is, therefore, prayed that this Hon'ble Court be pleased to answer the reference in affirmative by issuing directions to the respondents to reinstate him in service with retrospective effect alongwith all consequential benefits/ relief (s) of back wages, and other allied service benefits like the continuity of service, regularization, promotions, besides the cost of the petition and justice be done."

The respondent contested the claim petition and filed a detailed reply. The contents of reply as furnished by the respondent to the claim petition are reproduced ad-verbatim hereinafter:-

"PRELIMINARY OBJECTIONS:

1. That the petitioner has no locus standi to file and maintain the petition under reply against the replying respondents. The petitioner fails to satisfy the definition of "workman" as defined under the Industrial Disputes Act, as such the petition is liable to be dismissed at the very outset.
2. That the petitioner has no cause of action to file and maintain the petition under reply. The petitioner has not completed 240 days of continuous service in any calendar year with the respondent corporation so as to seek protection of sections 25(F) (G) and (H) of the Industrial Disputes Act. For the said reasons also the petition under reply merits dismissal with costs.
3. That the petitioner has not come to law with clean hands and is guilty of deliberate and intentional concealment of material facts. The allegation made in the claim petition that the petitioner has worked without wages with the Forest Corporation is false and incorrect to the very knowledge of the petitioner. The further allegation that the services of the petitioner were ordered to be terminated by the respondent Corporation is also false and frivolous. As a matter of fact, the respondent corporation has not terminated or retrenched the services of the petitioner at any point of time. Rather it is the petitioner himself who has abandoned the services of the respondent corporation. A sum of Rs.632/- on account of wages for the period 1.2.1990 to 15.2.1990 remains unpaid to the petitioner and the petitioner has failed to

turn up to collect the dues till date. The replying respondent corporation is ready and willing to make payment of the dues amounting to Rs.632/- For the said reason also the petition under reply is liable to be dismissed.

4. That the petitioner is estopped from filing the present petition on account of his acts, deeds, conduct and acquiescence.

5. That the petition has not been filed in conformity with the provisions of the Industrial Disputes Act, Code of Civil Procedure and the High Court Rules and Orders. For the said reasons the petition is liable to be dismissed.

6. That the petition as filed is grossly belated and time barred and merits dismissal on this count as well.

PARAWISE REPLY

1. In reply to para 1 of the petition, it is submitted that the petitioner was initially engaged on 1.1.1989 by the respondent Corporation as daily waged Chowkidar. The petitioner worked under the Assistant Manager, Ranital at the Fields Units of Jawalamukhi and Surani and Lanj, H.P. The petitioner continued to work as such to April, 1989. The petitioner worked for 29 days in January, 1989, 28 days in February, 1989, 29 days in March, 1989 and for 11.5 days in April, 1989. The entire allegations to the contrary are false and as such specifically denied. It is specifically denied that the petitioner worked without wages till 30.4.1989. It is further wrong and specifically denied that the petitioner was transferred to the Dharamshala Division.

2. Para 2 of the petition as stated is wrong and denied. It is wrong and specifically denied that the petitioner joined in the office of respondent no.2 at Dharamshala. It is further wrong and specifically denied that the petitioner remained posted as daily waged chowkidar till 30.12.1989 in the office of respondent no.2. The entire allegations are false and concocted even to the knowledge of the petitioner.

3. Para 3 of the petition as stated is wrong and denied. It is wrong and specifically denied that the petitioner was transferred by the respondent Corporation, to the Khridi Depot. It is wrong and specifically denied that there were any transfer orders issued to the petitioner or that the petitioner joined at the Khridi Depot pursuant to the alleged transfer orders. As a matter of fact, the petitioner was once again engaged as daily waged chowkidar on 1.1.1990, where after he worked as such with the respondent Corporation up to 31.1.1990 and thereafter from 16.2.1990 to 28.2.1990. It is wrong and specifically denied that the petitioner worked upto 31.3.1990 or that the petitioner worked to the entire satisfaction of the respondents. As a matter of fact, the petitioner was a habitual absentee and there were complaints with regard to his work when he remained with the respondent corporation on daily wages.

4. Para 4 of the petition as stated is wrong and denied. It is wrong and specifically denied that the petitioner was not paid wages for the work which he had done with the respondent no.2 as alleged. It is wrong and specifically denied that the replying respondent has withheld the wages to the petitioner w.e.f. 1.5.1989 to 31.3.1990. As a matter of fact, the petitioner was not working with the respondent Corporation during this period. It is wrong and specifically denied that the services of the petitioner have been terminated without following the Industrial Disputes Act, 1947. It is submitted that the petitioner has himself abandoned the services of the respondent Corporation and the petitioner is not entitled to the relief, as claimed. It is reiterated at the cost of repetition that the petitioner worked with the respondent Corporation only for the period January, 1989 to April, 1989 and thereafter w.e.f. 1.1.1990 to 31.1.1990 and 16.2.1990 to 28.2.1990. The petitioner neither remained in continuous service of the respondent Corporation nor completed 240 days in any calendar year, so as to seek protection of Section 25(F) (G), and (H) of the Industrial Disputes Act. Moreover, the petitioner himself abandoned the services of the respondent Corporation to assist his father in his contractor ship business.

5. Para 5 of the petition is wrong and specifically denied to the extent that Sections 25(N) of the Industrial Disputes Act was applicable in the case of the petitioner. It is wrong and specifically denied that the services of the petitioner were terminated or retrenched or that the respondent Corporation has involved in any act, which is void-ab-initio or that the petitioner is entitled to be declared to be in continuous service with full back wages and seniority as falsely claimed. The petitioner is guilty of making false allegations and is not entitled to any relief from this Hon'ble Court.

6. Para 6 of the petition is wrong and denied. As already stated supra the petitioner is not entitled to the protection of section 25(F) of the Industrial Disputes Act, as he had not completed 240 days of continuous service in any calendar year and his services have neither been terminated nor retrenched by the respondent Corporation. The petitioner himself abandoned the services of the respondent Corporation to assist his father in the contractor ship business. The petitioner was not entitled to one month notice or pay in lieu of notice as claimed in para under reply. It is submitted at the cost of repetition that the replying respondent Corporation has not indulged in any act, which is void-ab-initio and the petitioner is not entitled to any relief much less the wrongly claimed relief of reinstatement in service with full back wages and seniority.

7. In reply to para 7 of the petition, wrongly numbered as para 6, it is submitted that the petitioner has himself abandoned the service of the respondent Corporation to assist his father in his contractor ship work. The claim of the petitioner that he is entitled to seniority, which is to be calculated on the assumption that all units of the H.P State Forest Corporation constitute a single unit is unwarranted and untenable. The entire allegations to the contrary are wrong and false and as such emphatically denied.

8. Para 8 of the petition, as stated is wrong and denied. It is wrong and specifically denied that the service of the petitioner was terminated by the respondent corporation. It is wrong and specifically denied that the petitioner approached the respondent no.2 for his reinstatement. It is wrong and specifically denied that the petitioner was assured that as and when his services would be required, he would be called. It is wrong and specifically denied that the petitioner's services were terminated or that the protection of Section 25(H) of the Industrial Disputes Act was available in the case of the petitioner. It is submitted at the cost of repetition that the petitioner himself abandoned the services of the respondent Corporation. The petitioner was never terminated or retrenched as alleged. The allegation of termination of services is wholly incorrect and false. It is further wrong and specifically denied that the respondent Corporation has ignored the provisions of the Industrial Disputes Act.

9. Para 9 of the petition as stated is wrong and denied. It is denied at the cost of repetition that the services of the petitioner were terminated. It is wrong and specifically denied that the attitude of the respondent Corporation was unreasonable as alleged. The reference by the appropriate Government to this Hon'ble Court is not denied.

REPLY TO THE SUBMISSIONS ON ISSUES REFERRED TO THIS HON'BLE COURT

1. Para 1 as stated is wrong and denied. The respondent Corporation has not terminated the services of the petitioner. It is wrong and specifically denied that the petitioner has completed 240 days of continuous service or that he petitioner was entitled to the protection of Section 25F, G and H of the Industrial Disputes Act. It is wrong and specifically denied that the respondents were required to pay salary in lieu of notice or that the services of the petitioner have been terminated or that the Respondent Corporation has indulged in any acts which is void-ab-initio, as alledged.

2. Para 2 as stated is wrong and denied. The petitioner has neither been retrenched nor is he entitled for any retrenchment compensation.

3. Para 3 as stated is wrong and denied. It is submitted at the cost of repetition that the petitioner himself abandoned the services of the respondent corporation. It is wrong and specifically denied that the petitioner has any preferential rights or legitimate rights. He had himself abandoned the service of the respondent Corporation. It is wrong and specifically denied that the petitioner is entitled to any salary or that he has completed 240 days of continuous service with the respondent Corporation. It is wrong and specifically denied that the respondent Corporation has failed to discharge its statutory duties as alleged.

It is, therefore, respectfully prayed that in view of the submissions made herein above, the petition under reply merits dismissal with costs and may kindly be dismissed as such in the interest of fair play and justice.”

The claimant contested the Reply of the respondents and filed a rejoinder. The contents of rejoinder as furnished by the claimant to the reply of the respondents are reproduced ad-verbatim hereinafter:-

“Reply to Preliminary Objections:

1 to 6 That the contents of these paras of the preliminary objections of the contained in the reply of the respondent are totally wrong and contrary to the real facts. It is submitted that the petitioner was initially engaged as a chowkidar on daily wage basis on 1.1.1989 by the respondent No.2 and the petitioner has remained as daily waged worker in the office of the respondent till 31.3.1990 when his services of daily wages were orally terminated by the respondents. During the service tenure with the respondents, the petitioner worked at various offices of the respondent corporation with in the Forest Division. As such the petitioner has completed his 240 days prior to his retrenchment in case period is to be counted w.e.f. 1.1.1989 to 31.3.1990. Petitioner has never abandoned his services as alleged by the respondent corporation. While to the contrary the services of the petitioner was orally terminated by the respondent corporation w.e.f. 31.3.1990. It is relevant to mention here that the respondent corporation has admitted about the wages for the period of 1.2.1990 to 15.2.1990 which *prima facie* shows that the petitioner was discharging his duties in the office of respondent corporation even during the month of February 1990. It is also submitted that the respondent has been wrongly alleging about the non collection of the dues of Rs.622/- from the respondent. The fact remained that at number of occasions the petitioner approached to the concerned authorities but every time the authorities send his back by putting certain excuses of administrative set up and also told him that this amount would be sent to the petitioner at his address through post. Rest of the contents of paras of the preliminary objections are wrong hence denied in its entirety. The present claim petition has been filed by the petitioner in accordance to the provisions of the Act.

Rejoinder to Reply

1 to 4. That the contents of these paras of the reply are totally wrong and misrepresented by the respondent before this Hon'ble Court. It is submitted the petitioner was first time engaged on daily wage basis vide office No. HPSFC/PWD/EI dated 13.2.89 and was posted on Lot No. 28/88-89. Subsequently, the services of the petitioner was continued vide office orders No. HPSFC/FWD/E-1/Vol. VIII 2145-48 dated 6.5.89, No. HPSFC/FWD/E-1/Vol. VIII 4302-03 dated 8.6.89, No. 241 R/88-89 dated 4.5.1989 and No. HPSFC/FWD/E-1/1230-31 and office letter No.271-72 dated 16.4.1990. In this way the petitioner kept on discharging his duties with the respondents w.e.f. 1.1.1989 till 31.3.1990 and thus completed his 240 days. The

petitioner never abandoned his service as alleged by the respondent. For rest of the contents the submissions made in the original claim petition are reiterated and reasserted.

5 to 8. That the contents of these paras of the reply are also wrong and hence denied. It is submitted in the rejoinder that he petitioner has discharged his duties with the respondents for continuous 240 days at Lot No. 28/88-89 in pursuance to various office orders w.e.f. 1.1.1989 till 31.3.1990 when the services of the petitioner was orally terminated by the respondent corporation. As such the petitioner is amenable to invoke the provisions of Section 25(F) (G), (H) and (N) of the Industrial Disputes Act, 1947 against the respondent corporation. For rest of the contents the submissions made in original claim petition are reiterated and reasserted.

Rejoinder to the submissions on issues referred to this Hon'ble Court.

1 to 3. That the petitioner has completed his 240 days prior to his oral termination i.e. w.e.f. 1.1.1989 till 31.3.1990. Hence the petitioner is entitled the protection of Section 25F, G,H and N as well of the Industrial Disputes Act, 1947. The petitioner had never abandoned the services of the respondent corporation. Whereas, to the contrary, the respondent corporation has orally terminated the services of the petitioner without following the mandatory provisions of the Industrial Disputes Act, 1947.

It is, therefore, respectfully prayed that the present claim petition/reference may kindly be allowed in favour of the petitioner and against the respondent corporation in the interest of justice.”

On the pleadings of the parties, this Tribunal framed the following issues:

1. Whether the services of petitioner has been illegally terminated by respondent on 31.3.1990. If so, its effect. OPP
2. If Issue NO.1 is proved in affirmative, to what relief of service benefits the petitioner is entitled to? OPP
3. Whether the petitioner has no locus standi to file the present petition? OPR
4. Whether the petitioner is estopped to file the present petition due to his own acts, conducts, deeds and acquiescence? OPR
5. Relief.

For the reasons to be recorded hereinafter while discussing the issues for determination, my findings on the aforesaid issues are as under:

Issue No.1	No
Issue No.2	No benefits
Issue No.3	Not pressed
Issue No.4	Not pressed
Issue No.5	Claim petition dismissed.

REASONS FOR FINDINGS

Issues No. 1 and 2

Since both these issues are interlinked, hence, taken up together for determination.

In proof of the assertions in the claim petition wherein the claimant has asserted that despite fulfillment by him of the condition precedent as enshrined in the provisions of

section 25-F of the Industrial Disputes Act, inasmuch, as, with his having put in 240 days of continuous service under the respondent in the 12 calendar months preceding his disengagement from service of the claimant by the respondent, he, had rendered the statutory period of continuous qualifying service under the respondent he has depended upon his testimony in his examination-in-chief, which bald and uncorroborated testimony as its by way of any oral or any documentary evidence does not inspire the confidence, hence, is unreliable.

In proof of the contention of the respondents in its reply wherein they have taken a forthright stand that the claimant did not render 240 days continuous service under the respondent in the 12 calendar months preceding his disengagement from service by the respondent, hence, was not entitled to receive the protection of the provisions of section 25-F of the Industrial Disputes Act have depended upon the testimony of RW1 who has been emphatic as well as categorical in his deposition in examination-in-chief qua the fact of the claimant having not rendered the statutory period of qualifying service under the respondent as enshrined in the provisions of section 25-F of the Industrial Disputes Act, inasmuch, as, the records pertaining to the service of the claimant and as available with the respondent negate the assertions of the claimant in the claim petition and his deposition in his examination-in-chief. The above testimony of RW1 negating the claim of the claimant for his entitlement to receive the protection of the provisions of section 25-F of the Industrial Disputes Act, inasmuch, as, his having not rendered the statutory period of qualifying service under the respondent so as to receive its protection, has remained un-rebutted, as, only a cursory suggestion has been put in the cross-examination of RW1 by the Id. counsel for the petitioner, as, to whether he has brought the original record with him while depositing the factum of the claimant having not rendered the statutory period of qualifying service under the respondent, which suggestion though has elicited a response to the

effect that he has demonstrated his willingness to produce the service record of the claimant, hence, indicative of its existence, as such, despite, the existence of original record pertaining to the service of the claimant under the respondent, the claimant has not chosen to produce the original record by way of seeking recourse to such measures as known to law, hence, has abandoned, to, rebut the testimony of RW1 in ousting the claimant's entitlement to receive the protection of the provisions of section 25-F of the Industrial Disputes Act, inasmuch, as, his not having fulfilled the statutory criteria for receiving the protection of the provisions of section 25-F of the Industrial Disputes Act, accordingly, has acquiesced to the veracity of the un-rebutted testimony of RW1 qua the number of days of service to put in by the claimant under the respondent and it is falling abysmally short of the days required for the claimant to assert in the claim petition that he ought to receive the protection of the provisions of section 25-F of the Industrial Disputes Act, the deposition in examination-in-chief of the witness is to be imputed full credence. Hence, the claimant, when he has been unable to prove the infraction of the provisions of section 25-F of the Industrial Disputes Act, he, cannot contend that for want of compliance by the respondent with its provisions his disengagement is legally fallible.

25F. Conditions precedent to retrenchment of workmen- No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until-

- (d) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice;
- (e) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average [pay for every completed year of continuous service] or any part thereof in excess of six months; and
- (f) notice in the prescribed manner is served on the appropriate Government [or such authority as may be specified by the appropriate Government by notification in the Official Gazette].

Also it was contended that there was infraction of the provisions of section 25-H of the Industrial Disputes Act, whose provisions are extracted hereinafter which

envisages that in case subsequent to the disengagement of a workman his, juniors are reengaged then preceding such reengagement of juniors priority is to be given to the retrenched workman for reengagement, however, there is no cogent evidence in proof of violation of the above provision, even in the evidence of petitioner by way of recital of specific names save, the suggestion to RW1 during the course of cross-examination which have been denied by him to the extent that he cannot depose orally with the said fact, hence, when it was open to the petitioner to resort to the calling of the records to prove the said fact as the onus to do so was upon him, his, having abandoned to do so, makes out an adverse inference against him that had such record been produced, it, would have been adversarial to him. Issues decided accordingly.

"25 (H). Re-employment of retrenched workman. – Where any workmen are retrenched, and the employer proposes to take into his employ any persons, he shall, in such manner as may be prescribed, give an opportunity [to the retrenched workmen who are citizens of India to offer themselves for reemployment, and such retrenched workmen] who offer themselves for reemployment shall have preference over other persons".

Issues No. 3 and 4

During the course of arguments, these issues were not pressed before me, hence, these issues decided as unpressed.

Relief

Claim petition is dismissed. Reference answered accordingly.

Let a copy of this award be sent to the appropriate government for publication in the official gazette. The file after completion be consigned to the record room.

Sd/-

Announced
19.3.2008

(Sureshwar Thakur)
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala.

IN THE COURT OF SHRI SHER SINGH SEN, PRESIDING JUDGE, LABOUR
COURT-CUM-INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.

Reference: No.123/2006
Presented on:
Decided on: 12.5.2008

Shri Subhash Chand s/o Sh. Roshan Lal through Sh. N.L. Kaundal,
Authorised Representative (BMS) H/Q Balakrupi, P.O. Jalpehar,
Tehsil Joginder Nagar, District Mandi, H.P.

.....Petitioner

	Versus	
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1. The Executive Engineer, HPPWD National Highway
Division Joginder Nagar, District Mandi, H.P.

...Respondent.

ORDER/AWARD

12-5-2008

Pr. Sh. N.L. Kaundal, A.R., for the petitioner.

Sh. Vijay Singh Mehta, AAE, A.R. for the respondent.

No PW present. At this stage Sh. N.L. Kaundal, A.R. for the petitioner, has withdrawn the petition, vide his separate statement. Hence the petition is dismissed as withdrawn. A copy of this order be sent to the Labour Commissioner, Labour & Employment, Govt. of Himachal Pradesh, for information. The file after its due completion be consigned to the records.

Announced

12-5-2008

Sd/

(S.S.Sen)

Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

IN THE COURT OF SHRI SHER SINGH SEN , PRESIDING JUDGE, LABOUR
COURT-CUM-INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.

Reference: No.58/2008
Presented on:
Decided on: 17.5.2008
Pardhan, M/s Pyara Rexine Mazdoor Sangh, Mehatpur, Una, H.P.Petitioner
Versus
M/s Pyara Rexine Pvt. Ltd. Plot No. 2-B, Mehatpur, Una, H.P. ...Respondent.

ORDER/AWARD

17-5-2008

Pr. None for the Petitioner.

Sh. Karan Pathania, adv., vice counsel for the respondent.

The case again called on several times, but none is appearing for the petitioner, even though he was present in person on the last date of hearing. It is 3 P.M. Hence, the claim petition is dismissed for default. A copy of this order be sent to the Labour Commissioner, Shimla for information and record. The file after completion be consigned to records.

Announced

17-5-2008

Sd/

(S.S. Sen)

Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

17-5-2008

Pr. None for the petitioner.

Sh. Karan Pathania, adv., counsel for the respondent.

The case again called on several times, but none is appearing for the petitioner, even though he was present in person on the last date of hearing. It is 3 P.M. Hence, the claim petition is dismissed in default. A copy of this order be sent to the Labour Commissioner, Shimla for information and necessary action. The file after completion be consigned to records.

Announced

Sd/

(S.S. Sen)

Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

**IN THE COURT OF SHRI SHER SINGH SEN , PRESIDING JUDGE, LABOUR
COURT-CUM-INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.**

Reference: No.151/2006
Presented on:
Decided on:24.5.2008

1. Shri Govind Ram S/O Sh. Sant Ram (2) Sh. Suresh Kumar s/o Sh. Phonu Ram (3) Sh. Raj Kumar s/o Sh. Prakam Ram (4) Sh. Nanak Chand s/o Sh. Hari Singh (5) Smt. Narvda Devi w/o Sh. Chand Ram (6) Smt. Guddi Devi w/o Sh. Sadhu Ram, R/O Village Tobri, P.O. & Tehsil Joginder Nagar, District Mandi, H.P.
....Petitioners

Versus

The Executive Engineer, (B&R) Division, HPPWD, Joginder Nagar, District Mandi, H.P.

...Respondent.

ORDER/AWARD

24-5-2008

Pr. None for the Petitioner.

Respondent's A.R., Sh. B.S. Thakur in person.

The case called on several times, but none is appearing for the petitioners. It is 12.26 P.M. Be awaited and it be put up after lunch hours.

Sd/
(S.S. Sen)
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

24-5-2008

Pr. None for the petitioner.

Respondent's A.R. Sh. B.S. Thakur in person.

The case again called on several times, but none is appearing for the petitioners. It is 3 .41 P.M. Hence, the claim petition is dismissed for default of appearance of the petitioner. A copy of this order be sent to the Labour Commissioner, Shimla for information and necessary action. The file after completion be consigned to records.

Announced

Sd/
(S.S. Sen)
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

**IN THE COURT OF SHRI SHER SINGH SEN, PRESIDING JUDGE, LABOUR
COURT-CUM-INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.**

Reference: No.134/2007
Presented on:
Decided on: 24.5.2008

Smt. Kanta Devi w/o Sh. Hari Singh, Village & P.O. Dul, Tehsil
Joginder Nagar, District Mandi, H.P.

.....Petitioner

Versus		
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The Additional Superintending Engineer, HPSEB, Division,
Joginder Nagar, District Mandi, H.P.

.....Respondent.

ORDER/AWARD

24-5-2008

Pr. Sh. N.L. Kaundal, A.R. for the petitioner.

Sh. J.S. Chauhan, adv., counsel for the respondent.

The petitioner's Authorised Representative submits that his client does not wish to prosecute her claim embodied in the reference, and that her claim petition be therefore dismissed as withdrawn. His statement to this effect recorded separately. Hence, the claim petition is dismissed as withdrawn. The reference on hand stands answered accordingly. A copy of this order be sent to the Labour Commissioner for information and necessary action. The file after completion be consigned to records.

Announced

24-5-2008

Sd/

(S.S. Sen)

Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

**IN THE COURT OF SHRI SHER SINGH SEN, PRESIDING JUDGE, LABOUR
COURT-CUM-INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.**

Reference: No.98/2006
Presented on:
Decided on: 26.5.2008

Shri Rajesh Kumar s/o Sh. Shakti Chand Village Chalokhar, P.O.
Naroli, Tehsil & District Hamirpur, H.P.

.....Petitioner

Versus

The District Ayurvedic Officer, Hamirpur, District Hamirpur,
H.P.

.....Respondent.

ORDER/AWARD

26-5-2008

Pr. None for the petitioner.

Sh. H.S. Dhiman, Ld. Dy. D.A. for the respondent.

The case called on several times, but none is appearing for the petitioner. It is 3.30 P.M. Hence, the petition is dismissed for default of appearance of the petitioner. A copy of this order be sent to the Labour Commissioner for information and necessary action. The file after completion be consigned to records.

Announced

Sd/
(S.S.Sen)
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

IN THE COURT OF SHRI SHER SINGH SEN, PRESIDING JUDGE, LABOUR
COURT-CUM-INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.

	Reference: No.25/2008
	Presented on:
	Decided on: 27.5.2008
Shri Rakesh Kumar s/o Sh. Piar Singh, Village & P.O. Nohra, Tehsil Baijnath, District Kangra, H.P.Petitioner
Versus	
The Executive Engineer, H.P.P.W.D. Division, (B&R), Baijnath, District Kangra, H.P.Respondent.

ORDER/AWARD

27-5-2008 Pr. Sh. N.L. Kaundal, A.R. for the petitioner.

 Sh. H.S. Dhiman, Ld. Dy. D.A. for the respondent.

The petitioner's Authorised Representative submits that his client does not wish to prosecute her claim embodied in the reference, and that his claim petition be therefore dismissed as withdrawn. His statement to this effect recorded separately. Hence, the claim petition is dismissed as withdrawn. The reference on hand stands answered accordingly. A copy of this order be sent to the Labour Commissioner for information and necessary action. The file after completion be consigned to records.

Announced

Sd/
(S.S.Sen)
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharmsala, H.P.

IN THE COURT OF SHRI SHER SINGH SEN, PRESIDING JUDGE, LABOUR
COURT-CUM-INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.

Reference: No.132/2007
Presented on:
Decided on: 28.5.2008

Shri Maghar Singh s/o Sh. Karam Singh, Village Manuhal, P.O.
Dagla, Tehsil Nurpur, District Kangra, H.P.

.....Petitioner

	Versus	
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The Assistant Project Director, Kandi Project, Bhadroya, Tehsil
Indora, District Kangra, H.P.

.....Respondent.

ORDER/AWARD

28-5-2008 Pr. None for the petitioner.

Sh. H.S. Dhiman, Ld. Dy. D.A. for the respondent.

The case again called on several times, but none is appearing for the petitioner. It is 3.30 P.M. Hence, the petition is dismissed in default. A copy of this order be sent to the Labour Commissioner for information and necessary action. The file after completion be consigned to records.

Announced

Sd/

(S.S.Sen)

Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

IN THE COURT OF SHRI SHER SINGH SEN, PRESIDING JUDGE, LABOUR
COURT-CUM-INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.

Reference: No.29/2007

Presented on:

Decided on: 5.6.2008

Shri Atma Ram s/o Sh. Mingo Ram, Village and P.O. Punner,
Tehsil Palampur, District Kangra, H.P.

.....Petitioner

Versus

The Manager, M/s New Prem Bus Service, Nagrota Bagwan,
Tehsil & District Kangra, H.P.

.....Respondent.

ORDER/AWARD

5-6-2008

Pr. Petitioner Atma Ram with counsel
 Sh. Rajinder Thakur, adv., vice..
 Respondent Sh. Pawan Kumar, proprietor,
 M/s. New Prem Bus Service, Nagrota Bagwan, Distt. Kangra,
 H.P. with counsel Sh. M.G. Thakur, adv.

The matter in dispute has been settled amicably between the parties. By way of amicable settlement, Pawan Kumar, Proprietor of the respondent, M/s New Prem Bus Service, Nagrota Bagwan, has paid the petitioner a sum of Rs. 23,000/- as full and final satisfaction of his claim. Having received the amount, the petitioner states that he is no longer interested in getting employment with the respondent nor does he wish to prosecute his claim. He submits that his petition be dismissed as withdrawn. The petitioner's statement of this effect recorded separately. Statement of Pawan Kumar also recorded separately. In view of the amicable settlement between parties and the petitioner's statement, the claim petition is dismissed as withdrawn. A copy of this order be sent to the Labour Commissioner for information as necessary action. The file after completion be consigned to records.

Announced

Sd/
 (S.S.Sen)
 Presiding Judge,
 Labour Court-cum-Industrial
 Tribunal, Dharamshala, H.P.

IN THE COURT OF SHRI SHER SINGH SEN, PRESIDING JUDGE, LABOUR
COURT-CUM-INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.

Reference: No.30/2007
Presented on:
Decided on: 5.6.2008

Shri Raj Kumar s/o Sh. Brham Chand, Village and P.O. Maranda,
Tehsil Palampur, District Kangra, H.P.

.....Petitioner

Versus

The Manager, M/s New Prem Bus Service, Nagrota Bagwan,
Tehsil & District Kangra, H.P.

..... Respondent.

ORDER/AWARD

5-6-2008 Pr. Petitioner Atma Ram with counsel
Sh. Rajinder Thakur, adv., vice..
Respondent Sh. Pawan Kumar, proprietor,
M/s. New Prem Bus Service, Nagrota Bagwan, Distt. Kangra,
H.P. with counsel Sh. M.G. Thakur, adv.

The matter in dispute has been settled amicably between the parties. By way of amicable settlement, Pawan Kumar, Proprietor of the respondent, M/s New Prem Bus Service, Nagrota Bagwan, has paid the petitioner a sum of Rs. 23,000/- as full and final satisfaction of his claim. Having received the amount, the petitioner states that he is no longer interested in getting employment with the respondent nor does he wish to prosecute his claim. He submits that his petition be dismissed as withdrawn. The petitioner's statement of this effect recorded separately. Statement of Pawan Kumar also recorded separately. In view of the amicable settlement between parties and the petitioner's statement, the claim petition is dismissed as withdrawn. A copy of this order be sent to the Labour Commissioner for information as necessary action. The file after completion be consigned to records.

Announced

Sd/
(S.S.Sen)
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

IN THE COURT OF SHRI S.S. SEN PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL DHARAMSHALA, H.P.

Ref No..	: 487/2002
Date of Institution	: 11.10.2004
Date of decision on the issue of delay and laches	: 5.6.2008

Shri Kushal Singh S/o Shri Saran Dass, R/o Vill. Sunkhar, P.O. Rajhoon, Teh. Palampur, Distt. Kangra, H.P.

....Petitioner

Versus

1. Himachal Pradesh State Electricity Board, Vidyut Bhawan, Kumar House, Shimla-171 004, through its Secretary.
2. Executive Engineer, H.P.S.E.B. Electrical Division, Palampur, Teh. Palampur, Distt. Kangra, H.P.
3. Assistant Engineer, H.P.S.E.B. Electrical Division, Daroh, Teh. Palampur, Distt. Kangra, H.P.

.....Respondents

Reference under section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. Rahul Gupta, Adv.

For the Respondents : Sh. Amit Sood, Adv.

AWARD

The following reference was received for adjudication from the appropriate Government:

"Whether the termination of services of Shri Kushal Singh S/o Shri Saran Dass, workman by the Executive Engineer, (Electrical Division) H.P.S.E.B., Palampur, District Kangra, H.P. w.e.f. 25.9.1986 without complying with the provisions of the Industrial Disputes Act, 1947, and Clause 14 (2) of the

Certified Standing Orders of the Board, whereas junior to him are retained by the board is proper and justified? If not, what relief of service benefits Shri Kushal Singh is entitled to?"

2. On notice, the petitioner filed his statement of claim wherein he asserted that he was engaged by the respondents as a daily waged worker (Beldar) in the Electrical Division, Daroh on February 20, 1985, and that he worked as such up to September 25, 1986 when his services were terminated by the respondent orally. Claiming to have worked for 267 ½ days during the said period, the petitioner averred that at the time he was terminated orally, he was assured that he would be reinstated as and when a vacancy would arise. Thereafter he visited the respondent and made a request for reinstatement, but of no avail. His father later made a written representation to the Hon'ble Prime Minister of India, who referred the matter to the Government of Himachal Pradesh for sympathetic consideration. The Govt. of H.P. referred the matter to the respondent 1, but without effect. Alleging the respondents to have adopted unfair labour trade practice and terminated his services in violation of the provisions of sections 25-F and 25-N of the Industrial Disputes Act, 1947, (the Act, for short), the petitioner prayed for a direction to the respondents to re-engage him as daily waged worker from the date of his unlawful termination and pay him back wages along with consequential relief of regularization, seniority and other incidental service benefits.

3. The respondents contested the petitioner's claim on various grounds. One of the grounds was that the petition was not maintainable on account of delay and laches.

4. On the pleadings of the parties, the following issues were framed for determination:

1. Whether the services of the petitioner were disengaged by the respondent w.e.f. 25.9.1986 without complying the provisions of Industrial Disputes Act, 1947 and Clause 14(2) of the Standing Orders of the Board and in violation of the principle of First Come last go, in an illegal and un-justified manner?
...OPP
2. If issue no.1 is proved in affirmative to what service benefits and amount of compensation the petitioner is entitled to?
...OPP
3. Whether the petition is not maintainable as alleged?
4. Whether the petitioner has no cause of action, as allged? OPR
5. Whether the petitioner has abandoned the job voluntarily on 25.9.1986 of his own, if so its effect. OPR
6. Relief.

5. The respondent's contention embodied in issues 3 to 5 did not find favour with this court. The petitioner's claim encompassed in issue 1 commanded itself to this court and the petition was therefore allowed, vide award dated October 26, 2005. The relief granted to the petitioner was:

"since the services of the petitioner were dis-engaged in violation of procedure laid down under clause 14.2 of the Standing Orders, therefore, the petitioner is held entitled for his reinstatement on the same terms and conditions in which he was working prior to his illegal dis-engagement with all consequential service benefits except back wages. The respondent is directed to re-engage the petitioner within a period of 90 days from today, failing which the petitioner shall be entitled for full wages. In the peculiar facts and circumstances of the case, the petitioner is also held entitled for a lump sum amount of Rs.2,000/- as litigation expenses."

6. Aggrieved, the respondents laid challenge to the award by preferring a Civil Writ Petition titled H.P. State Electricity Board and Ors. Vs. Kushal Singh & Anr. (CWP 164/2006) before the Hon'ble High Court of Himachal Pradesh.

One of the contentions raised by the respondents (petitioners in the said CWP) before the Hon'ble High Court was "that since the claim of the respondent-employee is highly belated, therefore, the Tribunal ought to have considered the same before passing any direction with regard to back wages as also seniority and continuation in service." It was alleged that in awarding back wages no reasoning was given by this court. The Hon'ble High Court while disposing of the Writ Petition remanded the matter to this court for decision on a limited issue, vide order dated June 21, 2007. It was inter alia observed:

"Having perused the award, I find favour with the submission of learned counsel for the petitioners that the issue of delay and laches for the purposes of determination of back wages, seniority and continuation in service has not been considered at all. Therefore, without disturbing the finding of the Tribunal, the matter is remanded back to the Tribunal on this limited issue.

During the course of hearing, it was further argued that there is material record to show that respondent-employee had completed 240 days of service and was in any event entitled for notice under Section 25-F of the Act and that juniors have been retained and new persons have been employed after termination in violation of Section 25-G and 25-H of the Act. According to the learned counsel for the petitioners, it is disputed question, which cannot be gone into by this Court.

It would be open for the parties to place on record additional material in support of their claims without unnecessarily delaying the matter. The Tribunal is directed to decide the matter, after affording opportunity of hearing within a period of 16 weeks from today.

Further, it would be open for the respondent-employee to independently take up the matter with the concerned authority who shall, keeping in view the averments made by him in the claim petition, sympathetically consider re-engagement of respondent-employee in accordance with law."

7. On receipt of the matter by remand, this court, however, adjudicated upon the matters in controversy afresh and dismissed the claim petition, vide award dated September 27, 2007.

8. Aggrieved by the dismissal of the claim petition, the petitioner preferred a writ petition (CWP No. 2183/2007) before the Hon'ble High Court of

Himachal Pradesh. The Hon'ble High Court allowed the writ petition, set aside the impugned award dated 27.9.2007 and remanded the matter to this court, vide judgment dated April 10, 2008. This court was directed to decide the issues strictly as per the aforementioned judgment dated 21.6.2007 of the Hon'ble High Court of H.P.

9. Be it stated that after receipt of the matter by remand, the parties did not choose bring any record on additional material in support of their arrival claims.

10. The only question that in view of the facts and circumstances of this case and the aforereproduced order dated June 21, 2007 of the Hon'ble High Court of arises for determination is whether or not the petitioner's claim in so far as the same relates to back-wages, seniority and continuation in service suffers from delay and laches.

The answer, to my thinking is in the negative, notwithstanding the fact that the petitioner's prayer for back-wages was negatived by this court, vide award dated October 26, 2005. This court while allowing the petitioner's prayer for his reinstatement on the same terms and conditions as on which he was working prior to his illegal disengagement, however, directed the respondent to re-engage him within a period of 90 days from the date of the award, failing which the petitioner was held entitled to "full wages". No doubt it was only after a lapse of about 11 years that a representation was made against the petitioner's unlawful retrenchment, but the principle of delay and laches, to my mind, cannot be held applicable in view of the facts and circumstances of the case. In Divisional Manager, HPFC & another Vs. Garibu Ram, latest HLJ 2007 (HP) 1160, a delay of more than 10 years was held to have not come in the way of the workman whose services were illegally terminated. Having the surveyed various rulings on the point, the Hon'ble High Court of Himachal Pradesh inter alia observed:

“.....While taking note of the entire case law with regard to the delay and laches, this Court consistently has held that the provisions of the Limitation Act would not apply but, however, depending upon the facts and circumstances of each case, the principles of delay and laches have to be seen and applied. A delay of even 14 years has been held not to come in the way of the poor man, whose services have been illegally terminated in claiming his relief under the provisions of the Industrial Disputes Act. In Deepa Ram's case (*supra*), there was a delay of 12 years. In Ramesh Chand's case (*supra*) there was a delay of 9 years. In Mohinder Kumar's case (*supra*), there was a delay of 14 years.....”

11. The petitioner, who is undeniably poverty-stricken, is stated to be illiterate and the principle of delay and laches cannot be held applicable to his case. More so, when the Hon'ble High Court of H.P. in its aforementioned judgment dated June 21, 2007 inter alia held:

“There is a finding on record that claim of the respondent-employee is not stale. The claim of the respondent-employee is not barred due to delay and laches has been found to be correct by the Tribunal. I am in agreement with the same.”

12. The upshot therefore is that the petitioner's claim in so far as the same relates to back-wages, seniority and continuation in service cannot be said to be barred due to delay and laches, this, however, is a matter apart that his prayer for back-wages has been rejected by this court on some other ground. A copy of this order be sent to the appropriate Govt. for necessary action and the file after completion consigned to records.

Announced:
5.6.2008

(S.S. Sen)
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

IN THE COURT OF SHRI SHER SINGH SEN, PRESIDING JUDGE, LABOUR
COURT-CUM-INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.

Reference: No.95/2006
Presented on:
Decided on: 16.6.2008

Shri Kewal Kumar s/o Sh. Bhagat Ram Village Kandharal, P.O.
Bharwana, Tehsil Palampur, District Kangra, H.P.

.....Petitioner

	Versus	
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The Principal, St. Pauls Senior Secondary School, Palampur,
District Kangra, H.P.

.....Respondent.

ORDER/AWARD

16-6-2008

Pr. Petitioner with Sh. N.L. Kaundal, Authorised
Representative.
Respondent with Sh. Rahul Gupta, adv.

At this stage the respondent states that the matter in dispute has since been settled amicably between the parties, and that by way of amicable settlement, I have today handed to the petitioner a Cheque amounting to Rs. 38,000/- as full and final satisfaction of his claim. His statement to this effect recorded separately. Accepting the correctness of the respondent's statement, the petitioner's authorized representative Sh. N.L. Kaundal, states that as his client has received from the respondent a Cheque amounting to Rs. 38,000/- as full and final satisfaction of his claim, he does not wish to proceed with the claim petition, which be therefore dismissed as withdrawn. His statement to this effect also recorded. Hence, the petition is dismissed as withdrawn. The reference stands answered accordingly. A copy of this order be sent to the Labour Commissioner for information as necessary action. The file after completion be consigned to records.

Announced

Sd/
(S.S.Sen)
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

IN THE COURT OF SHRI SHER SINGH SEN, PRESIDING JUDGE, LABOUR
COURT-CUM-INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.

Reference: No.196/2007
Presented on:
Decided on: 20.6.2008

Shri Kuldeep Chand s/o Sh. Sunder Ram, Village Bah, P.O. Gahar,
Tehsil Ghumarwin, , District Bilaspur, H.P.

.....Petitioner

Versus

The Executive Engineer, HPPWD Division, Ghumarwin,
District Bilaspur, H.P.

.....Respondent.

ORDER/AWARD

20-6-2008 Pr. None for the petitioner.
Sh. H.S. Dhiman, Ld. Dy. D.A. for the respondent.

The case again called on several times, but none is appearing for the petitioner. It is 3.30 P.M. Hence, the petition is dismissed for default of appearance of the petitioner . A copy of this order be sent to the Labour Commissioner for information and necessary action. The file after completion be consigned to records.

Announced

Sd/
(S.S.Sen)
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

**IN THE COURT OF SHRI S.S. SEN PRESIDING JUDGE,
LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL
DHARAMSHALA, H.P.**

Ref No.. : 183/2005

Date of Institution : 19.11.2005

Date of decision : 24.6.2008

Sh. Chajju Ram S/o Sh. Jagat Ram, Vill. Ther, P.O. Kukher, The. Nurpur,
Distt. Kangra, H.P.
....Petitioner

Versus

The Executive Engineer, H.P.P.W.D. Nurpur, District Kangra, H.P.

.....Respondent

Reference under Section 10 (1) of
the Industrial Disputes Act, 1947.

For the Petitioner : Sh. Rakesh Mehra, adv.

For the Respondents : Sh. H.S. Dhiman, Dy. D.A.

AWARD

The following reference was received for adjudication from
the appropriate Government:

“Whether the termination of services of Shri Chajju Ram S/o Sh. Jagat Ram workman by the Executive Engineer, H.P.P.W.D. Division Nurpur, District Kangra, H.P. w.e.f. July, 1992 without complying with the provisions of the Industrial Disputes Act, 1947 is proper and justified? If not, what relief of service benefits and amount of compensation the above aggrieved workman is entitled to?”

2. On notice, the petitioner filed his statement of claim wherein he asserted that he was engaged by the respondent as daily waged worker (Beldar) in Sulyali Sub-Division of HP.PWD in 1987, and that his services were terminated by the respondent orally in October, 1992. Claiming to have completed 240 days in each calendar year proceeding the date of termination of his services, the petitioner averred that he had performed his duties regularly, honestly and to the entire satisfaction of his superiors, but the respondent terminated his services without complying with the relevant provisions of the Industrial Disputes Act, 1947 (the Act, for short). The respondent while terminating his services retained such employees as were junior to him and did not serve him with a prior notice. Had his services not been terminated in an unlawful manner he would have completed 10 years of regular service in 1996 and become entitled to regularization of service. He therefore prayed for a direction to the respondent to reinstate him with seniority, regularize his services and pay him back-wages along with other consequential benefits.

3. The respondent contested and resisted the petitioner's claim chiefly in the grounds that he having left the job himself, it was not a case of termination of his services, and that the petition having been filed about 13 years after his alleged retrenchment suffers from the vice of delay and laches. Disputing the petitioner's claim that he had worked for 240 days in each calendar year preceding the date of his alleged

retrenchment, the respondent averred that he had worked for 277 ½ days in 1987, 309 ½ days in 1988, 302 ½ days in 1989, 156 ½ days in 1990, 212 days in 1991 and 102 days in 1992. Refuting the petitioner's allegations that certain employees who were junior to him were retained in service, the respondent further averred that the petitioner had worked as daily waged beldar w.e.f. 1987 to June, 1992, and that he having left the job on his own, the provisions of the Act were not attracted. As for the petitioner's claim that he would have completed 10 years of service and become entitled to regularization thereof had his services not been terminated unlawfully, the respondent's claim is that he having not fulfilled the criteria for regularization of his services, he was not entitled to the relief he prayed for.

4. On the pleadings of the parties, the following issues were framed for determination:

1. Whether the disengagement from service of the petitioner by the respondent is proper and justified.
OPR
2. If the above issue is decided in the affirmative, what relief of service benefits the petitioner is entitled to?
OPP
3. Whether the claim petition is stale and time barred.
OPR.
4. Relief.

5. For the reasons to be recorded hereinafter, my findings on these issues are as under:

Issue 1	No
Issue 2	He is entitled to the relief as mentioned in the operative part of the award.
Issue 3	No
Relief	The petition allowed partly per operative part of the award.

ISSUE 1

6. The petitioner's claim of having been engaged as daily waged beldar by the respondent in 1987 is not in dispute. What is disputed by the respondent is his claim that his services were terminated in October, 1992. According to the respondent, the petitioner had on his own abandoned the job in June, 1992 and the provisions of the Act were therefore not attracted in this case. But this claim, to my thinking, does not appear to be entirely true in view of the materials on record, which are demonstrative of the petitioner's services having been terminated in June, 1992. However, the petitioner's claim of having completed 240 days "in each and every calendar year from the date of his appointment", does not appear to be having a ring of truth in view of the evidence led by the respondent. The seniority list Ex. RW1/B and the affidavit of Shri N.K. Kapila, then Executive Engineer, Nurpur Division, HP.PWD, Ex.

RW1/A would reveal that the petitioner had worked as daily waged beldar for 277 ½ days in 1987, 309 ½ days in 1988, 302 ½ days in 1989, 156 ½ days in 1990, 212 days in 1991 and 102 days in 1992. The petitioner having thus not completed 240 days during the period of 12 calendar months preceding the date of termination of his services, the respondent cannot be said to have violated the provisions of section 25-F of the Act.

7. In terminating the services of the petitioner, the respondent, however, appears to have violated the provisions of section 25-G of the Act, which reads:

“25-G. Procedure for retrenchment.— Where any workman in an industrial establishment, who is a citizen of India, is to be retrenched and he belongs to a particular category of workmen in that establishment, in the absence of any agreement between the employer and the workman in this behalf, the employer shall ordinarily retrench the workman who was the last person to be employed in that category, unless for reasons to be recorded the employer retrenches any other workman”.

8. Recounting the material facts averred in the claim petition, the petitioner testified that at the time of termination of his services the department (respondent) had retained persons junior to him. This deposition of his having not been challenged during his cross-examination by the respondent, his claim that persons junior to him were retained at the time of his unlawful termination, to my thinking, appears to be tenable. More so, when his said deposition finds corroboration from

the statements of Kartar Singh (PW2) and Amar Nath (PW3). It deserves mention that nowhere in his statement did Sh. N.K. Kapila specifically dispute the petitioner's claim that persons junior to him were retained at the time of termination of his services. He in his cross-examination RW1 rather categorically admitted the petitioner's suggestion that as per the Govt. policy he would have become regular had his services not been terminated.

9. But not only did the respondent violate the provisions of section 25-G but also violated the provisions of section 25-H of the Act, which reads:

“25-H. Re-employment of retrenched workman. – Where any workmen are retrenched, and the employer proposes to take into his employ any persons, he shall, in such manner as may be prescribed, give an opportunity [to the retrenched workmen who are citizens of India to offer themselves for reemployment, and such retrenched workmen] who offer themselves for reemployment shall have preference over other persons”.

The petitioner in his statement as PW1 maintained that after termination of his services the respondent had employed persons acquainted to him. This claim of his having not been disputed during his cross-examination by the respondent, to my mind, appears to be true. More so, in view of the statements of Kartar Singh (PW2) and Amar Nath (P3), which are corroborative of the petitioner's claim. The respondent's witness N.K. Kapila's deposition in his cross-examination as RW1 that in May, 1992, a muster roll for engagement of 16 beldars was issued, and that muster rolls

continued to be issued even thereafter, to my mind, also lends assurance only to the petitioner's claim that after his retrenchment the respondent had taken into employ certain persons as Beldar. There being nothing to suggest that before engaging certain persons as beldar the respondent had given the petitioner an opportunity to offer himself for re-employment, the respondent can safely held to have violated the provisions of Section 25-H as well.

10. The upshot therefore is that the termination of services of the petitioner by the respondent was unlawful. The issue under discussion is accordingly held in favour of the petitioner and against the respondent.

ISSUE 2

11. In view of the facts and circumstances of this case and what has been held under the foregoing issue, the petitioner to my thinking, is entitled to reinstatement with 50% back-wages. However, during the pendency of the case he on June 4, 2008 made the following statement:

"I have become an aged person. I am about 55 and often remain sick. Now I am not able to do any kind of Govt. job. Now I do not wish to be in the employ of HP PWD. I therefore withdraw my claim for my reinstatement in job. However, I may be awarded compensation for the unlawful termination of my services."

In view of this statement and the facts and circumstances of this case, the petitioner is held entitled to only 50% back-wages for the period from

July 1, 1992 to the date of this award as compensation. The issue on hand is held accordingly.

ISSUE 3

12. Refuting the respondent's suggestion that he had instituted the case 15 years after (his retrenchment), the petitioner in his cross-examination as PW1 maintained that he had filed the case in 1998 at Nurpur. The documents Ex. PA, Ex. PB, Ex. PC and Ex. PD would reveal that the matter remained pending with the Labour Inspector, Nurpur (Kangra) until after May 23, 2003. Upon failure of the conciliation move, the Conciliation Officer-cum-Labour Officer, Dharamshala later submitted his report No. 3145 to the appropriate Govt. on December 8, 2003. The appropriate Govt. in its turn referred the dispute to this court on November 3, 2005. In view of these facts, it is difficult to hold that there was inordinate delay in approaching this Court or that the claim petition is stale and time barred. The issue under discussion is accordingly held in favour of the petitioner and against the respondent.

RELIEF

13. Judged in the light of my findings on the issues above, particularly issues 1 and 2, the petition succeeds partly and is allowed in part. Accordingly, the petitioner is held entitled to 50% back-wages for the period from July 1, 1992 to the date of this award as compensation. There shall be no order as to costs. The reference is answered

accordingly. A copy this award be sent to the appropriate Govt. for publication in the official gazette and the file after completion consigned to the record room.

Announced in the open Court today this 24th June, 2008.

(S.S.Sen)
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

IN THE COURT OF SHRI SHER SINGH SEN, PRESIDING JUDGE, LABOUR
COURT-CUM-INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.

Reference: No.153/2007
Presented on:
Decided on: 3.7.2008

Smt. Sunita Devi w/o Sh. Mohinder Singh, Vill. Kundi, P.O.Sunara
Tehsil and District Chamba, H.P.

.....Petitioner

Versus

The Manager H.P. Handloom and Handicraft Corporation Ltd.
Rang Mahal Chamba H.P.

.....Respondent.

ORDER/AWARD

3-7-2008

Pr. Petitioner with Sh. Ajay Katoch, adv.

Sh. Ranjeet Kumar, Manager, A.R. for the respondent.

At this stage Sh. Ranjeet Kumar, Manager and authorized representative of the respondent, states that he has reinstated the petitioner on the same post as on which she was working earlier. He undertakes that he would re-engaged her on contract on the same post as on which she is working at present, on priority basis, vide his statement recorded separately. In view of his undertaking, the petitioner has withdrawn the petition, vide her separate statement. Hence, the petition is dismissed as withdrawn. A copy of this order be sent to the Labour Commissioner for information and necessary action. The file after completion be consigned to records.

Announced

Sd/

(S.S.Sen)

Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

IN THE COURT OF SHRI SHER SINGH SEN , PRESIDING JUDGE, LABOUR
COURT-CUM-INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.

	Reference: No.145/2006
	Presented on:
	Decided on: 10.7.2008
The Pradhan Van Mazdoor Union Pandoh, District Mandi, H.P.Petitioner.	
Versus	
The Divisional Forest Officer, Forest Division Nachan, Gohar, District Mandi, H.P. ...Respondent.	

ORDER/AWARD

10-7-2008 Pr. None for the Petitioner.

Sh. H.S. Dhiman, Ld. Dy.D.A. for the respondent.

The case called on several times, but none is appearing for the petitioner. It is 11.05 A.M. Be awaited and it be put up after lunch hours.

Sd/
(S.S. Sen)
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

10-7-2008 Pr. None for the petitioner.

Sh. H.S. Dhiman, Ld. Dy.D.A. for the respondent.

The case again called on several times, but none is appearing for the petitioner. It is 3.10 P.M. Hence, the claim petition is dismissed for default of appearance of the petitioner. A copy of this order be sent to the Labour Commissioner, Shimla for information and necessary action. The file after completion be consigned to records.

Announced

Sd/
(S.S. Sen)
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

IN THE COURT OF SHRI SHER SINGH SEN , PRESIDING JUDGE, LABOUR
COURT-CUM-INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.

Reference: No.70/2006
Presented on:
Decided on:24.5.2008

Sh. Amar Chand s/o Sh. Kaul Ram, Village Gholat, P.O. Tandi,
Tehsil Anni, District Kullu, H.P.

....Petitioner.

Versus

The Divisional Forest Officer, Luhri, Tehsil Anni, District
Kullu, H.P.

...Respondent.

ORDER/AWARD

24-5-2008 Pr. Sh. N.L. Kaundal, A.R. vice for the petitioner.

None for the respondent.

The case called on several times, but none is appearing for the respondent. It is 12.44 P.M. Be awaited and it be put up after lunch hours.

Sd/
(S.S. Sen)
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

24-5-2008 Pr. Sh. N.L. Kaundal, A.R. vice for the petitioner.

None for the respondent.

The case again called on several times, but none is appearing for the respondent. It is 4.13 P.M. Hence, the respondent is proceeded against ex parte. For the petitioner's remaining evidence to come up on 10.7.2008 at Mandi.

Sd/
(S.S. Sen)
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

**IN THE COURT OF SHRI SHER SINGH SEN, PRESIDING JUDGE, LABOUR
COURT-CUM-INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.**

	Reference: No.105/2006
	Presented on:
	Decided on: 10.7.2008
Sh. Manohar Lal s/o Shri Rattan Dass, Through Sh. N.L. Kaundal, Legal Advisor (BMS) H/Q Balakrupi, P.O. Jalpehar, Joginder Nagar, District Mandi, H.P.Petitioner
Versus	
The Executive Engineer, HPPWD, (NH) Division Joginder Nagar, District Mandi, H.P.Respondent.

ORDER/AWARD

10-7-2008

Pr. Sh. N.L. Kaundal, A.R. for the petitioner.

Sh. H.S. Dhiman, Ld. Dy.D.A. for the respondent.

No PW present. However, at this stage the petitioner's authorized representative states that the matter in dispute having been settled amicably between the parties, he under the instructions of the petitioner does not wish to proceed with the case. Sh. N.L. Kaundal, therefore, withdrew the claim petition, vide his separate statement. Hence, the claim petition is dismissed as withdrawn. A copy of this order be sent to the Labour Commissioner for information and necessary action. The file after completion be consigned to records.

Announced

Sd/
(S.S.Sen)
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

In the Court of the Presiding Judge, Labour Court-cum-Industrial Tribunal,
Dharamshala.

Sh. Roop Lal Vs. The EE, HPSEB
Ref. No.1/06

10.7.2008 Present: Sh. N.L. Kaundal, AR, for the petitioner
Sh. J.S. Chauhan, adv., counsel for the respondent

No PW present. At this stage the petitioner's authorized representative under the instructions of his client does not wish to proceed with the case. Sh. Kaundal therefore withdrew the claim petition, vide his separate statement. Hence the claim petition is dismissed as withdrawn. A copy of this order be sent to the appropriate Govt. for information and necessary action. The file after completion be consigned to records.

Announced:

(sd/-)

Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

IN THE COURT OF SHRI S.S. SEN PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL DHARAMSHALA, H.P.

Ref No. : 45/2007

Date of Institution : 26.4.2007

Date of decision : 22.7.2008

Shri Neeraj Garg S/o Sh. Om Prakash Garg, Village Hatli, P.O. Draman, Tehsil Sihunta, District Chamba, H.P.

....Petitioner

Versus

The Executive Engineer, H.P.P.W.D. (N.H.) Division, Joginder Nagar, District Mandi, H.P.

.....Respondent

Reference under section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. Madan Thakur, Adv.

For the Respondent : Sh. H.S. Dhiman, Ld. Dy. D.A.

AWARD

The following reference was received from the appropriate Govt. for adjudication:

“Whether the action of the Executive Engineer, H.P.P.W.D. (N.H.) Division, Joginder Nagar, District Mandi, H.P. to give breaks in the services of Shri Neeraj Garg S/o Shri Om Prakash Garg workman during his service period time and again and finally terminating w.e.f. August, 2001 without complying the provisions of the Industrial Disputes Act, 1947 is proper and justified? If not, what relief of service benefits and amount of compensation the above aggrieved workman is entitled to?”

2. On notice, the petitioner filed his statement of claim wherein he averred that he was engaged as Junior Engineer by the respondent on daily wages in

May, 1999, and that he worked as such in the Shahpur Sub-Division of H.P.P.W.D., National Highway Division, Joginder Nagar, H.P. upto May 16, 2003 when his services were terminated by the respondent orally. Claiming to have worked for more than 240 days preceding the date of his unlawful retrenchment, the petitioner alleged that the respondent had started giving fictional breaks of 15 to 16 days every month in his service w.e.f. May, 2001, and that he therefore preferred before the H.P. Administrative Tribunal an application titled Neeraj Garg Vs. State of H.P. (O.A.(D) 389 of 2001). However, during the pendency of that application the respondent suddenly terminated his services on May 16, 2003, and he was therefore left with no option but to withdraw the application. Alleging that his services were terminated by the respondent without complying with the mandatory provisions of the Industrial Disputes Act, 1947 (the Act, for short), the petitioner further averred that in his removal from service, the respondent had adopted a pick and choose method because the persons junior to him were retained in the department. The petitioner therefore prayed for a direction to the respondent to re-engage him in the same capacity as in which he was working at the time of termination of his services. He also prayed for the consequential reliefs, i.e., back-wages, seniority etc.

3. The respondent contested and resisted the petitioner's claim chiefly on the grounds that he was engaged as junior engineer in May, 1999 subject to availability of work and funds. Refuting the petitioner's allegation that the fictional breaks were given in his services, the respondent averred that he having not worked for 240 days during the period of 12 calendar months preceding the date on which his services were allegedly terminated, there was no violation of the provisions of section 25-F of the Act. The petitioner's allegation that certain persons junior to him were retained in service, was also refuted by the respondent. It is averred that the

petitioner's services were not required nor could he be later re-engaged as there was no work/funds available with the department.

4. On the pleadings of the parties, the following issues were framed for determination:

1. Whether the disengagement from the service of the claimant by the respondent is proper and justified.OPP
2. If the above issue is proved in the affirmative, what relief of service benefits the claimant is entitled to?OPP
3. Whether the claim petition is stale. If so, its effect?OPR
4. Relief.

5. For the reasons to be recorded hereinafter, my findings on these issues are as under:

- Issue 1 : No
- Issue 2 : He is entitled to the relief as mentioned in the operative part of the award.
- Issue 3 : No
- Relief : The petition allowed partly per operative part of the award.

REASONS FOR FINDINGS

ISSUE 1.

6. The petitioner's claim that he was engaged as Junior Engineer by the respondent on daily wages in May, 1999, and that he worked as such in the Shahpur Sub-Division of HP. PWD National Highway Division, Joginder Nagar, HP, upto May 16, 2003, is not disputed by the respondent. What is disputed by the respondent

are his allegations that the respondent had started giving fictional breaks of 15 to 16 days every month in his service w.e.f. May, 2001 and that he had worked for more than 240 days preceding the date of his unlawful retrenchment. But denial by the respondent of these allegations, to my thinking, does not appear to be untenable. Although the petitioner in his affidavit Ex. PW1/A claimed to have worked for more than 240 days preceding the date of termination of his services and alleged that the respondent had on his own started giving fictional breaks of 15 to 16 days every month in his services w.e.f. May, 2001, this claim of his does not appear to be having a ring of truth in view of his categorical admission in his cross-examination as PW1 that he had not worked for 240 days in any of the years 1999, 2001, 2002 and 2003. The respondent's witness namely J.K. Sharma, then Assistant Engineer, National Highway Sub Division Shahpur, testified as RW1 that the petitioner had worked as Junior Engineer for 190 days in 1999, 281 days in 2000, 213 days in 2001, 165 days in 2002 and 73 days in 2003. There being no reason to discredit this deposition, I have no hesitation in holding that the petitioner having not worked for 240 days during the period of 12 calendar months preceding the date on which his services were allegedly terminated, the respondent cannot be said to have violated the provisions of section 25-F of the Act.

7. As for the petitioner's claim that certain persons, who were junior to him, were retained in service by the respondent at the time of termination of his services, to my mind, does not appear to be far from truth in view of the statement showing the details of junior engineers working on daily wages in HP.PWD, upto 31.12.2006, Ex.P2. This document is demonstrative of one Ranjit Singh S/o Sh. Ganga Ram having been engaged as Junior Engineer in HP. PWD in 2000 and his having worked as such upto December 31, 2006. In case no work or funds were available with the respondent, he ought to have retrenched such workman as was the

last person employed as Junior Engineer. In terminating the services of the petitioner on May 16, 2003, the respondent can therefore safely be held to have violated the provisions of section 25-G of the Act, which reads:

“25-G. Procedure for retrenchment. – Where any workman in an industrial establishment, who is a citizen of India, is to be retrenched and he belongs to a particular category of workmen in that establishment, in the absence of any agreement between the employer and the workman in this behalf, the employer shall ordinarily retrench the workman who was the last person to be employed in that category, unless for reasons to be recorded the employer retrenches any other workman”.

8. The upshot therefore, is that the termination of services of the petitioner by the respondent was unlawful. The issue under discussion is accordingly held in favour of the petitioner and against the respondent.

ISSUE 2

9. In view of the facts and circumstances of the case and what has been held under the foregoing issue, the petitioner, to my thinking, is entitled to reinstatement with 50% back-wages and the consequential service benefits including seniority. The issue on hand is held accordingly.

ISSUE 3

10. The petitioner in his affidavit Ex. PW1/A maintained that aggrieved by the respondent's act of giving fictional breaks in his service, he preferred before the H.P. Administrative Tribunal an application titled Neeraj Garg vs. State of H.P. (O.A.(D) 389 of 2001), and that as during the pendency of that application his services were forcibly terminated by the respondent on May, 2003, he was left with no option but to withdraw the application on October 12, 2004. This deposition of his having not been disputed during his cross-examination by the respondent and there being nothing suggestive of his having failed to take necessary steps for redressal of

his grievance against the respondent for such long period as on the basis of which his claim can be termed as stale, the respondent's claim that the petitioner's claim suffers from the vice of delay and laches cannot be accepted. Hence, the issue on hand is held in favour of the petitioner and against the respondent.

RELIEF

11. Judged in the light of my findings on the issues above, particularly issues 1 and 2, the petition succeeds partly and is allowed in part. Accordingly, the petitioner is held entitled to reinstatement on the same terms and conditions as on which he was working prior to the unlawful termination of his services. Besides, he is held entitled to 50% back-wages and the consequential service benefits including seniority. There shall be no order as to cost. The respondent is directed to re-engage the petitioner within a period of 90 days from today. The reference is answered accordingly. A copy of this award be sent to the appropriate Govt. for publication in the official gazette. The file after completion be consigned to the record room.

Sd/-
Announced:
22.7.2008
(S.S. Sen)
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

Government of Himachal Pradesh
Department of Revenue
(B-Section)

No.Rev.B.A.(4)-2/2007. Dated: Shimla-2, the 18th December, 2008.

NOTIFICATION

The Governor, Himachal Pradesh is pleased to rescind this Department notification of even number dated 8.6.2007.

By Order

(PREM KUMAR)
F.C.-cum- Principal Secretary (Revenue) to the
Government of Himachal Pradesh.

Authoritative English Text of this Department Notification No. Rev.B.F.(10)449/2008 dated 11.12.2008 as required under clause (3) of Article 348 of the Constitution of India.

Government of Himachal Pradesh
Revenue Department

No.Rev.B.F.(10)449/2008. Dated: Shimla – 171002 11.12.2008.

NOTIFICATION

In exercise of the powers conferred by clause (h) of section 5 of H. P Ceiling on Land Holdings Act 1972, the Governor of Himachal Pradesh is pleased to notify that the land to be held by M/s Met Trade (India) Ltd. village Mohthli Tehsil Indora, District Kangra, for setting up of industrial unit shall be exempted from the operation of the provisions of Himachal Pradesh Ceiling on Land

Holdings Act 1972. The detail of the land to be held by the said Company and notified to be exempted from the operation of the provisions of the Act ibid are given as under :

Tehsil	Village	Khasra No.	Area (in Hectares)
Indora	Mohtli	1138, 1147	0-50-78
		244 to 249, 279 to 284, 286 to 291, 1113, 1114, 1115, 1116/1, 1117 & 285	4-69-09
		1122 & 1123	0-20-72
		1121	0-02-72
		302, 303 & 306	0-17-75
		304, 1825/1099 & 1824/1099	2-49-59
		25, 27, 1125, 1128/1, 1129, 1136, 1143, 1160, 1167, 1173 & 1435	1-21-05
		1116/2 & 1120	0-69-32
		292 & 301	0-06-27
		240, 241, 1127, 1130, 1131 & 1132	2-81-79
		1118, 1124, 1126, 1128 & 1140	2-58-84
		1137 & 1139	1-34-66
		1113/1	0-26-97
		1142	0-22-84
		305	0-09-22
		1145	0-92-16
		1111 & 1141	1-68-89
		1112 & 1144	1-16-73
		1826/1099	3-05-94
		Total	24-25-33

By order

FC-cum-Secretary (Revenue) to the
Government of Himachal Pradesh

हिमाचल प्रदेश सरकार
राजस्व विभाग

संख्या: रैय0बी0एफ0(10)449 / 2008

दिनांक, शिमला — 171002, 11.12.2008.

अधिसूचना

हिमाचल प्रदेश के राज्यपाल, हिमाचल प्रदेश भू-जोत अधिकतम सीमा अधिनियम 1972 की धारा 5 के खण्ड (ज) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, अधिसूचित करते हैं कि मैसर्ज मेट टरेड (झिण्डया) लिमिटेड गांव मोटली तह0 इन्दौरा जिला कांगड़ा में धारित की जाने वाली भूमि को हिमाचल प्रदेश भू-जोत अधिकतम सीमा अधिनियम 1972 के उपबन्धों से छूट दी जाएगी। कथित कम्पनी द्वारा इस प्रकार धारित की जाने वाली भूमि और उपर्युक्त अधिनियम के उपबन्धों के प्रवर्तन से छूट के लिए अधिसूचित की जाने वाली भूमि का विवरण निम्नलिखित प्रकार से है।

तहसील	मोजा	खसरा नं0.	रकबा (है0)
इन्दौरा	मोटली	1138, 1147	0-50-78
		244 to 249, 279 to 284, 286 to 291, 1113, 1114,1115, 1116/1, 1117 & 285	4-69-09
		1122 & 1123	0-20-72
		1121	0-02-72
		302, 303 & 306	0-17-75
		304,1825/1099 & 1824/1099	2-49-59
		25, 27, 1125, 1128/1, 1129, 1136,1143,1160, 1167, 1173 &1435	1-21-05
		1116/2 & 1120	0-69-32
		292 & 301	0-06-27
		240,241, 1127, 1130, 1131 & 1132	2-81-79
		1118, 1124, 1126, 1128 & 1140	2-58-84
		1137 & 1139	1-34-66
		1113/1	0-26-97
		1142	0-22-84
		305	0-09-22
		1145	0-92-16
		1111 &1141	1-68-89
		1112 &1144	1-16-73
		1826/1099	3-05-94
		कुल रकबा	24-25-33

आदेश द्वारा,

वित्तायुक्त एवं सचिव,
हिमाचल प्रदेश सरकार।

